CORRECTED VERSION*

Final Analysis

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Legislative Service Commission

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(As Passed by the General Assembly)

Reps. **Dolan, Peterson, R. McGregor, Hottinger, Bacon, Evans, Hite, Budish, Strahorn, Yates, Chandler, D. Stewart, Boyd, R. Hagan, Skindell, Brown, Bolon, Adams, Aslanides, Barrett, Beatty, Blessing Bubp, Celeste, Collier, Combs, DeBose, DeGeeter, Domenick, Fende, Flowers, Gibbs, Goodwin, Goyal, J. Hagan, Harwood, Healy, Heard, Jones, Koziura, Letson, Luckie, Mallory, Miller, Otterman, Patton, Redfern, Schindel, Schlichter, Setzer, Szollosi, Uecker, Ujvagi, Wagoner, White, B. Williams, S. Williams, Zehringer**

Sens. **Carey, Niehaus, Clancy, D. Miller, Roberts, Padgett, Austria, Boccieri, Cates, Goodman, Harris, Jacobson, R. Miller, Spada, Stivers, Mumper, Faber, Wilson, Mason, Fedor, Smith, Sawyer, Schaffer, Cafaro, Amstutz, Grendell, Gardner**

Effective date: June 30, 2007; certain provisions effective September 29, 2007; certain provisions effective on other dates; contains item vetoes

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* The correction addresses the scope of civil immunity for a political subdivision and can be found under the Local Government category of this analysis on page 321.

** This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Budget in Detail spreadsheet and Final Fiscal Analysis for Am. Sub. H.B. 119 for an analysis of such provisions.

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. Items generally are presented in the order in which they appear in the Revised Code.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Eliminates authority of the state to self-insure for the purpose of insuring the state through the fidelity bonding of state officers and agents who are required by law to be covered by a fidelity bond and requires DAS to establish one or more insurance plans that provide for purchase of insurance for that purpose.

- Eliminates the Vehicle Liability Fund and combines the Vehicle Liability Program within the existing risk Management Reserve Fund.

- Creates new Schedules E-1 and E-2 rates of salaries and wages to be paid to exempt employees for pay periods including July 1, 2007, and July 1, 2008, providing a 3½% pay increase.

- Authorizes the Department of Administrative Services, but no other state agency, to provide printing or office reproduction services for political subdivisions.

- Eliminates the Department's duties with respect to the central management of agency forms.

- Authorizes the Director of Administrative Services to contract with the Office of Energy Efficiency in the Department of Development, rather than with an energy services company, contractor, architect, professional engineer, or other experienced person as under prior law, for an analysis and recommendations pertaining to energy conservation measures in state buildings.

- Permits the Director of Administrative Services, upon request, to contract for analyses and recommendations pertaining to energy conservation measures for buildings owned by state institutions of higher education.

- Transfers to the Department the printing office of the Office of Information Technology.

- Transfers to the Department the Mail and Fulfillment Services Office of the Department of Job and Family Services.

- Authorizes the temporary assignment of the duties of a higher classification to exempt employees with commensurate pay.

Fidelity bonding program to be administered through purchase of insurance

(R.C. 9.821 and 9.822)

The Department of Administrative Services, through the Office of Risk Management, is required to insure the state through the fidelity bonding of state officers, employees, and agents who are required by law to provide a fidelity bond. Under former law, the department and office, upon complying with several conditions,[1] could administer the fidelity bonding program through a self-insurance program. The act eliminates this authority, and declares that the statutory establishment of the fidelity bonding program is not to be construed to allow the department and office to administer the program through a self-insurance program. The department and office therefore are authorized only to establish one or more insurance plans that provide for the purchase of insurance in the voluntary market for the purpose of insuring the state through the fidelity bonding program. (R.C. 9.822(B).) Generally, the department is not authorized to purchase a fidelity bond covering officers or employees of a state agency unless the annual premium for the bond exceeds $1,000 (R.C. 125.03, not in the act).

Risk Management Reserve Fund

(R.C. 9.823 and 9.83)

Under former law, the Director of Administrative Services, through the Office of Risk Management, operated the Vehicle Liability Fund, which was used to provide certain insurance and self-insurance for the state pursuant to R.C. 9.83. The act eliminates the separate Vehicle Liability Fund and creates the Vehicle Liability Program within the existing Risk Management Reserve Fund. Amounts that under former law were deposited in the Vehicle Liability Fund instead will be

[1] Before establishing a self-insured fidelity bonding program for a particular class or subclass of state officers, employees, or agents, the Director of Administrative Services was required to hold a hearing to determine whether the fidelity bonds were available in the voluntary market. If the fidelity bonds were not so available, and if the absence of the bonds would threaten the operation of state government and be detrimental to the general welfare of Ohioans, the Director was required to adopt rules establishing standards and procedures to govern the establishment, administration, and termination of a self-insured fidelity bonding program for that particular class or subclass of state officers, employees, or agents. The director, annually by March 31, was required to prepare an annual report on any self-insured fidelity bonding program, providing information on premiums collected, income from recoveries, loss experience, and administrative costs of the program. A copy of the report was submitted to the Speaker of the House of Representatives and to the President of the Senate. (R.C. 9.821(C)(6)(a) and 9.822(B)(1) and (3).)

deposited in the Risk Management Reserve Fund to the credit of the Vehicle Liability Program.

Schedules of rates for certain public employees

(R.C. 124.152)

Continuing law provides that certain public employees are paid a wage or salary that is determined using one of four schedules of rates. Depending upon the type of employee, there is a specific schedule of rates that applies to and establishes compensation for the employee.

Managerial and professional public employees who are permanent employees paid directly by warrant of the Director of Budget and Management, whose positions are included in the state's job classification plan, and who are exempt from the Public Employee Collective Bargaining Law ("exempt employees"), receive wages or salaries based upon the schedule of rates known as Schedule E-2.[2] Under the Schedule E-2, there are a number of different pay ranges to which an employee paid under that schedule is assigned. Then, for each pay range, there is a specific minimum and maximum hourly wage or annual salary that the employee may receive.

Exempt employees who are not managerial or professional employees paid under Schedule E-2 receive wages or salaries based upon the schedule of rates known as Schedule E-1. Similar to Schedule E-2, Schedule E-1 contains a number of different pay ranges to which an employee paid under that schedule is assigned. However, rather than having a minimum and maximum hourly wage and annual salary for each pay range as under Schedule E-2, pay ranges under Schedule E-1 contain a number of step values, one to which an employee is assigned, with each step providing for a specifically set hourly wage or annual salary.

[2] Under R.C. 124.14(B), exempt employees, for purposes of R.C. 124.15 and 124.152, do not include any of the following: elected officials; legislative employees; employees of the Legislative Service Commission; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, the Auditor of State, the Treasurer of State, or the Attorney General; employees of the Supreme Court; employees of a county children services board that establishes its own compensation rates; any position for which the authority to determine compensation is given by law to an individual or entity other than the Department of Administrative Services; and employees of the Bureau of Workers' Compensation whose compensation the Administrator of Workers' Compensation establishes.

The act enacts new Schedules E-1 and E-2. The new schedules apply beginning on the first day of the pay period that includes July 1, 2007, and July 1, 2008, and each includes a 3½% increase in the salaries and wages.[3]

Provision of printing or office reproduction services for political subdivisions

(R.C. 125.45)

Prior law prohibited the Department of Administrative Services or any other state agency from performing printing or office reproduction services for political subdivisions. The act instead prohibits a state agency, other than the Department of Administrative Services, from performing printing or office reproduction services for political subdivisions.

Agency forms management

(R.C. 125.93, 125.95 (repealed), 125.96, 125.97, and 125.98)

A state forms management program is established in the Department of Administrative Services to assist state agencies in designing economical forms and in establishing internal forms management capabilities. Prior law required that this program establish basic design and specification criteria to standardize state forms, and maintain a central forms repository of all state forms. A state agency generally was not permitted to utilize any form unless it had been approved by the program or the program has delegated management of the form to the agency. Continuing law requires each state agency to appoint a forms management representative who, among other things, previously had to ensure that every form used by the agency was presented to the program for registration prior to its reproduction.

The act eliminates the Department's duties with respect to the central management of agency forms. It relieves the program of the standardization and repository responsibilities described above, and removes the requirement that forms be pre-approved by the program. The program does, however, retain its responsibility to provide forms management assistance to state agencies.

[3] The act also provides two new Schedule E-1s for Step Seven Only that will apply beginning on the first day of the pay period that includes July 1, 2007, and July 1, 2008 (R.C. 124.152(F) and (G)).

Energy conservation studies

(R.C. 156.02)

Contractor

Prior law authorized the Director of Administrative Services to contract with an energy services company, contractor, architect, professional engineer, or other person experienced in the design and implementation of "energy conservation measures" to make recommendations for such measures that would significantly reduce energy consumption and operating costs in buildings owned by the state. The act instead authorizes the Director to contract with the Office of Energy Efficiency in the Department of Development to make the recommendations. Under continuing law, the recommendations must include cost estimates (including the costs of design, engineering, installation, maintenance, repairs, and debt service) as well as estimates of savings in energy consumption and operating costs.

State institutions of higher education

Under continuing law, boards of trustees of state institutions of higher education also are authorized into contract for recommendations for energy conservation measures for the buildings under their control.[4] The act adds that the Director of Administrative Services may contract for energy conservation studies at any state institution of higher education, upon request of the institution's board.

Background--energy conservation measures

For the purpose of one of these studies, continuing law defines an "energy conservation measure" as "an installation or modification of an installation in, or a remodeling of, an existing building in order to reduce energy consumption and operating costs." The statute further states that an energy conservation measure includes (among others) insulation; storm windows and doors; automatic energy control systems; replacement or modification of heating, ventilating, or air conditioning systems; caulking and weather stripping; "cogeneration systems"; or "any other modification, installation, or remodeling approved by the Director of Administrative Services as an energy conservation measure."[5]

[4] See R.C. 3345.61 to 3345.66, not in the act.

[5] R.C. 156.01, not in the act.

Transfer to the Department of the Printing Office of the Office of Information Technology and the Mail and Fulfillment Services Office of the Department of Job and Family Services

(Sections 515.06 and 515.09)

The act provides that effective July 1, 2007, or on the earliest date thereafter agreed to by the Director of Budget and Management and the Director of Administrative Services, the Office of Information Technology (OIT) Printing Office located on Integrity Drive in Columbus becomes part of the Department of Administrative Services (DAS). Employees of the OIT Printing Office are to be transferred to DAS, subject, however, to the layoff provisions of the Civil Service Act and the contract between the state and all affected bargaining units. Transferred employees retain their positions and all benefits accruing to their positions. Because continuing law organizes OIT within DAS, the intent of the act is uncertain when it directs the OIT Printing Office to be transferred to DAS.

The act also provides that effective July 1, 2007, or on the earliest date thereafter agreed to by the Director of Job and Family Services and the Director of Administrative Services, the Department of Job and Family Services (DJFS) Mail and Fulfillment Office located on Integrity Drive in Columbus becomes part of DAS. Employees designated as staff of the Mail and Fulfillment Office are to be transferred to DAS, subject, however, to the layoff provisions of the Civil Service Act and the contract between the state and all affected bargaining units. Transferred employees retain their positions and all benefits accruing to their positions. The act requires the Director of Job and Family Services and the Director of Administrative Services to enter into an interagency agreement establishing terms and timetables for the implementation of the transfer. The agreement must include provisions for credit to DJFS for prepaid postage, agreements for the credit, transfer, or reimbursement of funds to DJFS to comply with terms and conditions applicable to federal funds DJFS expends for the purchase, maintenance, and operation of equipment, and agreements for ongoing operations in compliance with federal requirements applicable to DJFS programs that utilize mail and fulfillment services, transfer of or sharing of lease agreements, and any other agreements that the Director of Job and Family Services and the Director of Administrative Services determine are necessary for successful implementation of the transfer.

As a result of the transfers, all functions, assets, and liabilities, including records, leases, and contracts, of the OIT Printing Office and the DJFS Mail and Fulfillment Office are transferred to the Department of Administrative Services. The Department is successor to, assumes the obligations of, and otherwise constitutes the continuation of the OIT Printing Office and the DJFS Mail and Fulfillment Office. A validation, cure, right, privilege, remedy, obligation, or

liability conferred or incurred by, or otherwise relating to, either office is neither lost nor impaired by either transfer, and is to be administered by the Department of Administrative Services. All the rules, orders, policies, directives, and determinations of the OIT Printing Office and the DJFS Mail and Fulfillment Office continue in effect as rules, orders, policies, directives, and determinations of the Department of Administrative Services, until they are modified or rescinded by the Department.[6]

Any business begun but not completed by the OIT Printing Office or the DJFS Mail and Fulfillment Office at the time of the transfer is to be completed by the Department of Administrative Services, in the same manner, and with the same effect, as if it were completed by the office. An action or proceeding pending in a court or an administrative proceeding pending before an administrative agency to which the OIT Printing Office or the DJFS Mail and Fulfillment Office is a party is not affected by the transfer and is to be prosecuted or defended in the name of the Director of Administrative Services. In all these actions and proceedings, the Director, upon application to the court or agency, is to be substituted as a party.

The Director of Budget and Management is to take various actions with respect to budget changes that are made necessary by each transfer, including administrative reorganization, program transfers, consolidation of funds, creation of new funds, transfers of cash balances from old to new funds, and canceling encumbrances against old funds and re-establishing them against new funds. (Corresponding adjustments in appropriation accounts are to be made.) Not later than 60 days after the transfer of the OIT Printing Office, the Director of the Office of Information Technology is to certify to the Director of Budget and Management the amount of cash associated with printing services supported by the IT Services Delivery Fund. Similarly, not later than 60 days after the transfer of the DJFS Mail and Fulfillment Office, the Director of Job and Family Services is to certify to the Director of Budget and Management the amount of any unexpended balance of appropriations made to DJFS to support the office. Upon receiving the certifications, the Director of Budget and Management is to transfer the amount certified from the IT Services Delivery Fund or the unexpended appropriations to the State Printing Fund.

[6] If necessary to ensure the integrity of the Administrative Code rule numbering system, the Director of the Legislative Service Commission is required to renumber the rules of the OIT Printing Office and the DJFS Mail and Fulfillment Office to reflect their transfer to the Department of Administrative Services.

Temporary assignment of duties of a higher classification to exempt employees

(Section 706.03)

An "exempt employee" is a public employee who is exempt from collective bargaining. The act authorizes an appointing authority,[7] with an exempt employee's written consent, temporarily to assign the duties of a higher classification to the exempt employee. The period of time cannot exceed two years and the exempt employee is to be paid during the period at a rate commensurate with the duties of the higher classification. This temporary assignment authority is available only when a vacancy does not exist in the higher classification.

If it becomes necessary, the act permits exempt employees who are assigned to duties within their agencies that concern maintaining operations during the Ohio Administrative Knowledge System (OAKS) implementation to agree to such a temporary assignment for a period exceeding two years.

COMMISSION ON AFRICAN AMERICAN MALES (AAM)

- Requires the Ohio State University African American and African Studies Community Extension Center to establish the overall policy and plans of, and to direct, manage, and oversee, the Commission on African-American Males.

- Reduces the membership of the Commission from a maximum of 41 members to a maximum of 23 members and eliminates the Ohio Civil Rights Commission as fiscal agent for the Commission.

[7] An "appointing authority" is defined in R.C. 124.01 (not in the act) as an "officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution."

Reorganization of the Commission on African-American Males

(R.C. 4112.12 and 4112.13; Section 375.70.20)

Membership of the Commission

Under prior law, the Commission on African-American Males was an independent agency comprised of not more than 41 members. The act reduces its membership to a maximum of 23 as a result of: (1) eliminating from the Commission (a) the Adjutant General and the Directors of Rehabilitation and Correction, Mental Health, and Youth Services, or their designees, (b) one senator (formerly there were three Senate members and two House members), and (c) not more than 23 members appointed by the Governor and (2) requiring the Ohio State University African American and African Studies Community Extension Service, in consultation with the Governor, to appoint two members from the private corporate sector, four, five, or six members from the public corporate sector, and two members from the nonprofit sector.

The two senators and two representatives appointed to the Commission are to be nonvoting members from different political parties, and their appointments are not to extend beyond the time that they are members of the General Assembly.

Transfer of Policy and Management Functions

Under prior law, the Commission on African-American Males was an independent agency with its own appropriation, and the Ohio Civil Rights Commission served as its fiscal agent by handling routine support services relating to personnel and accounts. Under the act, the Ohio State University African American and African Studies Community Extension Center is to (1) develop overall policies and plans for the Commission, (2) direct, manage, and oversee the Commission, and (3) contract annually for a report on the status of African-Americans in Ohio, with policy recommendations. Issues to be evaluated in the report include the criminal justice system, education, employment, health care, housing, and such other issues as the Extension Center specifies.

The act requires the Commission to meet at least quarterly, to implement the policies and plans of the Extension Center, and to report to the Extension Center on the progress the Commission is making in implementing these plans and policies. The Executive Director of the Commission, who previously was appointed by the Commission, is to be appointed by the Extension Center instead, in consultation with the Governor. Under continuing law, the Executive Director reports to the Commission on its activities; however, the act also requires the Executive Director to report on these activities to the Extension Center, in such manner and at such times as the Extension Center determines.

The prior requirements that the Commission prepare and submit its budget to the Office of Budget and Management each biennium and to handle its own payroll and other operating expenses are eliminated, as well as the requirement that the Civil Rights Commission act as its fiscal agent. Money for the Commission's operations is to come from an appropriation to the Board of Regents rather than to the Commission.

DEPARTMENT OF AGING (AGE)

- Modifies the duty of the Director of Aging to disseminate Alzheimer's disease training materials for health and social service professionals.

- Expands the scope of the Alzheimer's Disease Task Force to include related disorders and renames it the Alzheimer's Disease and Related Disorders Task Force.

- Makes permanent a budget provision under which an individual admitted to a nursing facility while on a waiting list for the PASSPORT program can be placed in the program if it is determined that PASSPORT is appropriate and the individual would rather participate in PASSPORT than reside in the nursing facility.

- Requires the Department of Job and Family Services to apply for a federal waiver authorizing additional enrollments in PASSPORT under the newly permanent provision.

- Requires the Director to adopt rules certifying living facilities for Residential State Supplement (RSS) program participants.

- Permits the Director to adopt rules giving priority on the RSS waiting list to certain individuals who receive Supplemental Security Income benefits.

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

- Authorizes the Director to adopt rules giving certain recipients of Supplemental Security Income priority on the RSS waiting list.

- Increases by 3% the amount provided for each RSS program participant.
- Creates the Unified Long-Term Care Budget Workgroup.
- Authorizes the Director of Budget and Management to create new funds, transfer funds to and between appropriation items with Controlling Board approval, and take other actions in support of the Workgroup's proposals.
- Specifies that before a proposal for a unified long-term care budget can be implemented, the Joint Legislative Committee on Medicaid Technology and Reform must approve implementation of the proposal and submit its approval to the Governor.

Alzheimer's disease training materials

(R.C. 173.04)

Law unchanged by the act requires the Director of Aging to develop and disseminate new Alzheimer's disease training materials or to disseminate existing training materials for health and social service professionals who participate or assist in the care or treatment of Alzheimer's disease patients, including physicians, nurses, health care program administrators, social workers, and other health care professionals. The act adds a requirement that the Director disseminate the Alzheimer's disease training materials through the Department of Aging's internet web site. The act also gives the Director the option of either developing the training materials or obtaining them from other sources.

Alzheimer's Disease and Related Disorders Task Force

(R.C. 173.04)

Under continuing law, the Director of Aging is permitted, but not required, to create an Alzheimer's Disease Task Force to advise the Director on various issues pertaining to the care of Alzheimer's disease patients.[8] The act expands the

[8] According to the Department of Aging's legislative liaison, the Task Force met in the late 1980s and early 1990s but ceased meeting shortly after the Department discontinued state funding for Alzheimer's Disease research beginning in state fiscal year 1993 (state funding for research was terminated in light of federal funding devoted to this purpose, the condition of the state budget at the time, and the decision to spend all funds appropriated for Alzheimer's Disease initiatives on respite care). The Task Force has not

scope of the Alzheimer's Disease Task Force to include related disorders and renames it the Alzheimer's Disease and Related Disorders Task Force. The act also alters slightly the mission of the Task Force: under former law, the Task Force was to advise the Director regarding long-term care initiatives related to Alzheimer's disease. The act requires the Task Force to advise the Director of Aging on how to serve persons with Alzheimer's disease and related disorders in Ohio's unified long-term care budget system.

PASSPORT

Background

The Pre-Admission Screening System Providing Options and Resources Today (PASSPORT) program was established under R.C. 173.40 as a waiver component of the state's Medicaid plan. PASSPORT is administered by the Department of Aging and charged with providing home and community-based services to certain eligible aged and disabled Medicaid recipients as an alternative to care in a nursing facility.[9] PASSPORT is limited to the number of enrollments permitted by the Medicaid waiver.

The main budget bill of the 126th General Assembly (Am. Sub. H.B. 66) included a mechanism through which individuals on a waiting list for the PASSPORT program who were admitted to a nursing facility could instead participate in PASSPORT, even if the participation caused the program to exceed enrollment limitations (Section 206.66.44). This provision expired June 30, 2007.

The act

(R.C. 173.401)

The act provides for expansion of the number of PASSPORT recipients permitted by the waiver (see "***Waiver amendment***," below). Each month following the expansion, each area agency on aging[10] must determine whether individuals who reside in the area served by the agency and are on a PASSPORT waiting list have been admitted to a nursing facility. The agency must notify the

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convened in recent years. Electronic correspondence from Grace Moran, Legislative Liaison, Department of Aging (July 11, 2007) (on file with LSC staff).

[9] A nursing facility is a facility that is licensed as a nursing home and has a Medicaid provider agreement.

[10] Area agencies on aging are established under federal law to provide a single planning and service area managing federal and state programs for older Americans.

Long-Term Care Consultation Program administrator of any such individual.[11] The administrator must then determine whether PASSPORT is appropriate for the individual and whether the individual would rather participate in PASSPORT than continue to reside in the nursing facility. If the administrator determines the individual prefers PASSPORT, the administrator must notify the Department of Aging. On notification, the Department must approve the individual's enrollment in PASSPORT regardless of the PASSPORT waiting list and even though the enrollment causes PASSPORT enrollment to exceed the limit that otherwise would apply.

Waiver amendment. The Director of Job and Family Services is required by the act to submit a waiver amendment to the U.S. Secretary of Health and Human Services to authorize the additional PASSPORT enrollments required by the act. The PASSPORT expansion is to begin the month after the Secretary approves the waiver.

Reporting requirements. Each quarter, the Department of Aging must certify to the Director of Budget and Management the estimated increase in costs of the PASSPORT program resulting from additional enrollments under the act.

By the last day of each calendar year, the Director of Job and Family Services must submit to the General Assembly a report regarding the number of enrollees in the PASSPORT program resulting from the act's provisions and the costs and savings incurred as a result of the enrollments.

Residential State Supplement program

(R.C. 173.35; Section 213.20)

Background

The Department of Aging administers the Residential State Supplement (RSS) program, which provides payments for aged, blind, and disabled adults at risk of needing institutional care. The payments must be used for the provision of accommodations, supervision, and personal care services.

[11] The Long-Term Care Consultation Program is established by the Department of Aging. The administrator is the Department of Aging or an area agency on aging or other entity the Department contracts with.

Certification of facilities

(R.C. 173.35)

Continuing law modified by the act provides that, with certain exceptions, to be eligible for RSS an individual must reside in a facility licensed by the Department of Health or certified by the Department of Mental Health.[12] The act requires the Director of Aging to adopt rules establishing certification standards for facilities and to enter into an agreement with the Director of Mental Health to certify the facilities in accordance with the rules. Certain facilities will have to be both licensed and certified for residents to be eligible for RSS.

Waiting list

(R.C. 173.35)

The Director of Aging is required to establish a waiting list of individuals eligible to receive RSS payments if moneys appropriated to the Department of Aging are insufficient to make payments to all eligible individuals. The act authorizes the Director to adopt rules giving priority on the RSS waiting list to individuals placed on it on or after July 1, 2006, who receive Supplemental Security Income benefits. The act provides that the rules are not to affect the place on the waiting list of any person who was on the list on July 1, 2006. The rules may provide for priorities for the order in which individual placed on the waiting list are to begin to receive RSS payments. The rules may also set additional priorities based on living arrangement, such as whether the person has been admitted to a nursing facility. Prior law requiring an individual on the waiting list who resides in a community setting that is not required to be licensed or certified to have the individual's eligibility assessed before other individuals on the waiting list is eliminated by the act.

Home first component

(R.C. 173.351)

The act requires each area agency on aging to determine each month whether individuals who reside in the area served by the agency and are on a waiting list for RSS have been admitted to nursing facilities. The agency is required to notify the Long-Term Care Consultation Program administrator about the determination. The administrator must then determine whether RSS is

[12] An individual living in a licensed or certified living arrangement receiving state supplementation on November 15, 1990, or in an adult foster home certified by the Department of Aging can still receive RSS payments.

appropriate for the individual and whether the individual would rather participate in RSS than continue to reside at the nursing facility. If the administrator determines the individual prefers RSS, the administrator must notify the Department of Aging. On notification by the administrator, the Department must approve the individual for RSS in accordance with the priorities specified in rules adopted by the Department.

Each quarter, the Department of Aging must certify to the Director of Budget and Management the estimate of the increase in costs of the RSS program resulting from additional RSS enrollments under the act.

By the last day of each calendar year, the Director of Aging must submit to the General Assembly a report regarding the number of enrollees in the RSS program resulting from the act's provisions and the costs and savings incurred as a result of the enrollments.

Uncodified law establishes the amounts to be used by the Department of Aging to determine whether a resident is eligible for an RSS payment and the amount each resident is to receive per month. The amounts provided under the act represent a 3% increase. They are as follows:

(1) $927 for a resident of a residential care facility;

(2) $927 for a resident of an adult group home;

(3) $824 for a resident of an adult foster home;

(4) $824 for a resident of an adult family home;

(5) $824 for a resident of an adult community alternative home;

(6) $824 for a resident of an adult residential facility; and

(7) $618 for a person receiving adult community mental health housing services.

Unified Long-Term Care Budget Workgroup

(Section 213.30)

The act creates the Unified Long-Term Care Budget Workgroup, consisting of the following members:

(1) The Director of Aging;

(2) Consumer advocates, representatives of the provider community, and state policy makers, appointed by the Governor;

(3) Two members of the House of Representatives appointed by the Speaker of the House of Representatives, one from the majority party and one from the minority party;

(4) Two members of the Senate appointed by the President of the Senate, one from the majority party and one from the minority party;

The Director of Aging is to serve as the Workgroup's chairperson.

The Workgroup is charged with developing a unified long-term care budget that facilitates the following:

(1) Providing a consumer a choice of services that meet the consumer's health care needs and improve the consumer's quality of life;

(2) Providing a continuum of services that meet the needs of a consumer throughout life;

(3) Consolidating policymaking authority and the associated budgets in a single entity to simplify the consumer's decision making and maximize the state's flexibility in meeting the consumer's needs;

(4) Assuring the state has a system that is cost effective and links disparate services across agencies and jurisdictions.

Not later than June 1, 2008, the Workgroup must submit a written implementation plan that considers the recommendations of the Medicaid Administrative Study Council and the Ohio Commission to Reform Medicaid and incorporates the following:

(1) Recommendations regarding the structure of the unified long-term care budget;

(2) A plan outlining how funds can be transferred among involved agencies in a fiscally neutral manner;

(3) Identification of the resources needed to implement the unified budget in a multiphase approach starting in fiscal year 2009;

(4) Success criteria and tools to measure progress against the success criteria.

The report must be submitted to the Governor, the Speaker and the Minority Leader of the House of Representatives, the President and the Minority Leader of the Senate, and the members of the Joint Legislative Committee on Medicaid Technology and Reform.

Progress report on unified long-term care budget

The act requires the Directors of Aging and Budget and Management to annually submit a written report to the Speaker and the Minority Leader of the House of Representatives, the President and the Minority Leader of the Senate, and the members of the Joint Legislative Committee on Medicaid Technology and Reform[13] describing the progress towards establishing, or if already established, the effectiveness of the unified long-term care budget.

The act also specifies that before a proposal for a unified long-term care budget can be implemented, the Joint Legislative Committee on Medicaid Technology and Reform must approve implementation of the proposal and submit its approval to the Governor.

Director of Budget and Management authority

The act authorizes the Director of Budget and Management to do any of the following in support of the Workgroup's proposal:

(1) Create new funds and account appropriation items;

(2) With Controlling Board approval, transfer funds to and between appropriation items;

(3) Develop a reporting mechanism to show how the funds are being transferred and expended.

[13] R.C. 101.391 (enacted by the main appropriations act of the 2005-2006 biennium, Am. Sub. H.B. 66 of the 126th General Assembly) created the Joint Legislative Committee on Medicaid Technology and Reform. The Committee is authorized to review or study any matter it considers relevant to the operation of the Medicaid program, with priority given to the study or review of mechanisms to enhance the program's effectiveness through improved technology systems and program reform.

- Includes natural spring water in the agricultural goods that the Department of Agriculture may promote through the Ohio Proud Program.

- Authorizes the Director of Agriculture, in conducting investigations, inquiries, or hearings, to assess the party to an action that is brought before the Department of Agriculture pursuant to the Administrative Procedure Act specified costs incurred by the Department under certain circumstances, and provides that the assessment of costs may be appealed.

- Extends through June 30, 2009, the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund.

Ohio Proud Program

(R.C. 901.171)

Under law retained by the act, the Department of Agriculture may promote the use of Ohio-produced agricultural goods through the issuance of logotypes to qualified producers and processors under a promotional certificate program, commonly known as the Ohio Proud Program, to be developed and administered by the Division of Markets. The act includes natural spring water in the agricultural goods that the Department may promote through the Program.

Assessment of costs for conducting investigations, inquiries, and hearings

(R.C. 901.261)

Under the act, the Director of Agriculture, in conducting investigations, inquiries, or hearings, may assess the party to an action that is brought before the Department of Agriculture pursuant to the Administrative Procedure Act the actual costs incurred by the Department for depositions, investigations, issuance and service of subpoenas, witness fees, employment of a stenographer and hearing officer, and the production of books, accounts, papers, records, documents, and testimony if the applicable hearing officer determines that the party to the action has failed to comply with any statute or rule that is administered by the Director or if the hearing officer determines that the action was frivolous conduct by the party. The assessment of costs may be appealed to a court of competent jurisdiction. The

act states that nothing in those provisions can be construed to apply to investigations, inquiries, or hearings conducted under the Veterinarians Law.

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43; Section 815.03)

Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to $1.48 per gallon. From the taxes paid, a portion is credited to the Ohio Grape Industries Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. Under former law, the amount credited to the Ohio Grape Industries Fund was scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2007. The act extends the extra 2¢ earmarking through June 30, 2009.

OHIO AIR QUALITY DEVELOPMENT AUTHORITY (AIR)

- Authorizes the Ohio Air Quality Development Authority to use commodity contracts in connection with the acquisition or construction of air quality facilities, and defines "commodity contract" to mean a contract or series of contracts entered into in connection with the acquisition or construction of air quality facilities for the purchase or sale of a commodity that is eligible for prepayment with the proceeds of federally tax exempt bonds under the Internal Revenue Code and regulations adopted under it.

Use of commodity contracts

(R.C. 3706.01, 3706.03, 3706.041, 3706.05, and 3706.07)

Under continuing law, the Ohio Air Quality Development Authority assists Ohio businesses, government agencies, and not-for-profit agencies and individuals in complying with air quality requirements by providing technical and financial assistance and by financing the purchase, construction, or installation of air pollution control equipment. In addition, the Authority provides financial assistance for energy efficiency and conservation and for ethanol and other biofuel production facilities.

The act authorizes the Authority to use commodity contracts in connection with the acquisition or construction of air quality facilities and defines "commodity contract" to mean a contract or series of contracts entered into in connection with the acquisition or construction of air quality facilities for the purchase or sale of a commodity that is eligible for prepayment with the proceeds of federally tax exempt bonds under the Internal Revenue Code and regulations adopted under it.

DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Requires the Director of Alcohol and Drug Addiction Services to consult with the Director of Budget and Management and representatives of local and county alcohol and drug addiction services agencies to conduct an internal review of policies and procedures to increase efficiency and identify and eliminate duplicative practices.

Internal review

(Section 219.10)

The act requires the Director of Alcohol and Drug Addiction Services to consult with the Director of Budget and Management and representatives of local and county alcohol and drug addiction services agencies to conduct an internal review of policies and procedures to increase efficiency and identify and eliminate duplicative practices.

Any savings identified as a result of the internal review must be spent on community-based care.[14] The Director of Alcohol and Drug Addiction Services must seek Controlling Board approval before expending any funds identified.

[14] The act does not define "community-based care."

STATE BOARD OF EXAMINERS OF ARCHITECTS (ARC)

- Requires the state board of examiners of architects to create an architecture education assistance program to pay the enrollment fees of applicants for the internship program required for potential architects in order to receive their licenses.

Architecture education assistance program

(R.C. 4703.071)

Under existing law, applicants for a license to practice as an architect must complete an internship program, which is established or adopted by the state board of examiners of architects. The act requires that the board by rule, to establish, maintain, and administer an assistance program to pay applicant enrollment fees for the internship program. The act authorizes the board to determine eligibility criteria for applicants to receive funding from the assistance program which may include a minimum completed course work requirement.

ATTORNEY GENERAL (AGO)

- Allows the Superintendent of the Bureau of Criminal Identification and Investigation to pay the Federal Bureau of Investigation for criminal records checks without the Controlling Board's prior approval of a waiver of competitive selection requirements.

- Creates in statute the Bureau of Criminal Identification and Investigation Asset Forfeiture and Cost Reimbursement Fund.

Payment for criminal records checks

(R.C. 127.16)

Generally under ongoing law, once a state agency's purchases from a particular supplier reach $50,000, any additional purchase from that supplier must be made by competitive selection or approved by the Controlling Board. The act allows the Superintendent of the Bureau of Criminal Identification and

Investigation in the Attorney General's office to pay the Federal Bureau of Investigation (FBI) for criminal records checks without the Controlling Board's prior approval of a waiver of competitive selection requirements. According to the agency, the FBI is the only supplier available to provide federal criminal background checks.

BCII Asset Forfeiture and Cost Reimbursement Fund

(R.C. 109.521; Section 227.10)

The act creates in the state treasury the Bureau of Criminal Identification and Investigation Asset Forfeiture and Cost Reimbursement Fund, consisting of all amounts awarded to the Bureau as a result of shared federal asset forfeiture, all state and local moneys designated as restitution for reimbursement of the costs of investigation, and any interest earned on the fund. The Fund was created by the Controlling Board in January 1997, but was not recognized by the Revised Code. Money from the Fund must be used in accordance with federal asset forfeiture laws, rules, and regulations.

AUDITOR OF STATE (AUD)

- Requires the Auditor of State to complete a performance audit of the Rehabilitation Services Commission and to submit a report of the audit's findings to the Governor, President of the Senate, Speaker of the House of Representatives, and the Board of the Rehabilitation Services Commission.

- Requires the Auditor of State to complete a performance audit of the Department of Alcohol and Drug Addiction Services and to submit a report of the findings of the audit to the Governor, President of the Senate, Speaker of the House of Representatives, and the Director of Alcohol and Drug Addiction Services (VETOED).

- Requires the Auditor of State to complete a performance audit of the Department of Mental Health and to submit a report of the findings of the audit to the Governor, President of the Senate, Speaker of the House of Representatives, and the Director of Mental Health (VETOED).

Performance audits

(Sections 219.10, 325.20.60, and 379.10)

The act requires the Auditor of State to complete a performance audit of the Rehabilitation Services Commission and to submit, on completion of the audit, a report of the audit findings to the Governor, President of the Senate, Speaker of the House of Representatives, and the Board of the Rehabilitation Services Commission. Any savings identified by the audit must be spent on community-based care but can be spent only with Controlling Board approval.[15] The Rehabilitation Services Commission must reimburse the Auditor for expenses of the audit.

The Governor vetoed provisions that would have required the Auditor to complete similar performance audits of the Departments of Alcohol and Drug Addiction Services and Mental Health.

OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Moves specified custodial funds into the state treasury.
- Makes the chief administrative officer of a state agency, rather than the Director of Budget and Management, responsible for preauditing and approving a state agency's expenditures and other accounting transactions.
- Makes the chief administrative officer responsible for ensuring that state agency purchases in which a state credit card is used are made in accordance with OBM guidelines and do not exceed the available balance in the appropriation to be charged.
- Specifically authorizes OBM to approve, disapprove, void, or invalidate encumbrances or financial transactions of state agencies; maintain and periodically audit the financial records of and submission of vouchers by state agencies; and provide assistance in the analysis of the financial position of state agencies.
- Creates the OAKS Support Organization Fund in the state treasury to pay the operating expenses of Ohio's enterprise resource planning system.

[15] The act does not define "community-based care."

- Creates the Forgery Recovery Fund in the state treasury to receive moneys collected by the Attorney General in cases of fraud or forgery involving state warrants.

Certain custodial funds moved into the state treasury

(R.C. 109.93, 111.18, 173.85, and 173.86; Section 512.41)

The act moves the following custodial funds into the state treasury, thereby requiring appropriations by the General Assembly in order to use the fund money:

(1) The Attorney General Education Fund. (This fund consists of gifts and grants received by the Attorney General for educational programs such as consumer protection, victims of crime, environmental protection, and peace officer training.)

(2) The Secretary of State Alternative Payment Program Fund. (This fund consists of fees paid under any alternative payment program implemented by the Secretary of State that permits payment by means other than cash, check, money order, or credit card.)

(3) The Ohio's Best Rx Program Fund. (This fund generally consists of payments made by participating manufacturers, administrative fees, and amounts donated to the fund, and is used primarily to pay claims under the program.)

State agency purchases

Responsibility for preauditing a request for payment

(R.C. 126.07 and 126.21(A)(8))

Under former law, a state agency requesting that a payment be made from the state treasury was first required to submit to the Director of Budget and Management all invoices, claims, vouchers, and other evidentiary matter related to the payment. The Office of Budget and Management (OBM) then initiated a pre-auditing process in which it examined the vouchers, contracts, and other related documents to substantiate the transaction, ensure that the signatures on the voucher were valid, and check that its other requirements had been met. If the Director approved the payment, the Director was required to issue a warrant. (A warrant is a negotiable instrument, looking similar to and circulating much like a check, that promises payment upon the availability of money in the state treasury.)

The act transfers responsibility for the pre-auditing of expenditures and other transactions of a state agency from OBM to the chief administrative officer of the agency. "**Chief administrative officer**" is defined as (1) the director of the agency or, in the case of an agency without a director, the equivalent officer of the agency or (2) a person the chief administrative officer designates for the purpose (for example, the agency's chief fiscal officer). The act requires the chief administrative officer to examine all invoices, claims, vouchers, and other documents related to the payment and determine whether they meet all the requirements established by OBM for making a payment. If they do, the officer is to certify his or her approval to OBM for payment. In other words, the agency that purchased the goods or services is to handle the routine paperwork related to the purchase and to assume responsibility for ensuring that the payment is proper and that the supporting documents are in order.

At the same time, the act leaves OBM with two of its existing functions related to making payments and gives it two additional powers. Specifically, the act leaves unchanged the requirement that OBM not "approve payment" if it finds that there is not an unobligated balance in the appropriation for the payment, that the payment is not for a valid claim against the state that is legally due, or that insufficient documentation has been submitted. It also leaves OBM with the function of drawing warrants against the state treasury, a function that was transferred to it from the Auditor of State effective December 1, 2006.

One of the additional powers that the act gives OBM is, prior to drawing a warrant on the state treasury, to "review and audit" the voucher and other documentation related to the transaction to determine if the transaction is in accordance with law. The other power it gives OBM is, *after* approving a payment, to perform such reviews and compliance checks as OBM considers necessary.

Use of a payment card

(R.C. 126.07 and 126.21(B))

The act requires the chief administrative officer (see definition immediately above) of a state agency that uses a payment card (that is, a state credit card) for purchases to ensure that the purchases are made in accordance with guidelines issued by OBM and that the purchases do not exceed the unexpended, unencumbered, unobligated balance in the appropriation to be charged for the purchase.

Control over the financial transactions of state agencies

(R.C. 126.08)

Ongoing law authorizes OBM to exercise control over the financial transactions of state agencies except those in the judicial and legislative branches. Such control includes the approving or disapproving of encumbrances. The act specifies that it includes "approving, disapproving, voiding, or invalidating encumbrances or transactions." (An encumbrance is a reservation of part of an appropriation, in the estimated amount of a purchase order, contract, etc., to ensure that money to pay for the goods or services that are being ordered or contracted for will be available when the goods are received or the services have been performed.)

Auditing and accounting services

(R.C. 126.22)

Ongoing law empowers the Director of Budget and Management to (1) perform accounting services for and design and implement accounting systems with state agencies and (2) provide other accounting services, including the preparation and submission of reports. The act specifies that these "other accounting services" also includes (a) the maintenance and periodic auditing of the financial records of and submission of vouchers by state agencies and (b) the provision of assistance in the analysis of the financial position of state agencies.

OAKS Support Organization Fund

(R.C. 126.24)

Ohio's enterprise resource planning system, called the Ohio Administrative Knowledge System, or OAKS, is a project aimed at improving the effectiveness, efficiency, and integration of central government business functions across all state agencies. OAKS integrates capital improvements, financials, fixed assets, human resources, and procurement.

The act creates the OAKS Support Organization Fund in the state treasury for the purpose of paying the operating expenses of the system. The fund consists of cash transfers from OBM's Accounting and Budgeting Fund and DAS's Human Resources Services Fund, and other revenues designated to support the operating costs of OAKS. All investment earnings of the fund must be credited to it.

Forgery Recovery Fund

(R.C. 126.40)

The act creates in the state treasury the Forgery Recovery Fund. The fund consists of all moneys collected by the Attorney General from the resolution of cases of fraud or forgery involving warrants issued by the Director of Budget and Management. The Director must use the fund to pay costs associated with the reissue of state warrants to payees whose warrants were fraudulently redeemed.

DEPARTMENT OF COMMERCE (COM)

- Extends from December 15, 2008, to December 15, 2011, the moratorium on the issuance of a fireworks manufacturer license to a person for a particular fireworks plant or a fireworks wholesaler license to a person for a particular wholesale location unless the person possessed such a license for that plant or location immediately prior to June 29, 2001.

- Extends from December 15, 2008, to December 15, 2011, the moratorium on the geographic transfer of a fireworks manufacturer or wholesaler license to any location other than the location for which the license was issued immediately prior to June 29, 2001.

- Would have removed one of the requirements for the transfer of a fireworks wholesaler license: that the licensee requests the transfer because an existing facility poses an immediate hazard to the public (VETOED).

- Would have exempted a licensed fireworks manufacturer, wholesaler, or exhibitor who conducts sales only on the basis of defused representative samples in closed and covered displays within a fireworks showroom from the requirement of having an interlinked fire detection, fire suppression, smoke exhaust, and smoke evacuation system (VETOED).

- Would have clarified that a fireworks storage area must be separated from a public fireworks sale area by an appropriately rated fire barrier wall (VETOED).

- Removes the prohibition against the Ohio Real Estate Commission adopting standards for continuing education courses of study for real

estate brokers and salespersons that require successful passage of an examination as a condition for the successful completion of a course of study.

- Creates the B-2a liquor permit, authorizes the permit to be issued to certain manufacturers and certain brand owners and importers of wine located inside and outside of Ohio, and establishes a $25 permit fee.

- Authorizes a B-2a permit holder to sell wine to retail permit holders if the B-2a permit holder produces less than 150,000 gallons of wine per year.

- Creates the S liquor permit, authorizes the permit to be issued to certain manufacturers and certain brand owners and importers of wine located inside and outside of Ohio, and establishes a $25 permit fee.

- Allows an S permit holder to ship wine directly to personal consumers in accordance with specified procedures and requirements.

- Prohibits a family household from purchasing more than 24 cases of nine-liter bottles of wine annually.

- Eliminates former authority for A-2 liquor permit holders, i.e. wine manufacturers, to sell wine and wine products for home use and to retail permit holders, but authorizes those permit holders to sell wine and wine products in sealed containers for consumption off the premises where manufactured.

- Lowers the permit fee for an A-2 liquor permit from $126 to $76.

- Clarifies that the Liquor Control and Liquor Permits Laws do not prevent the manufacture, sale, and transport of ethanol or ethyl alcohol for use as fuel.

Fireworks Law changes

(R.C. 3743.17, 3743.19, 3743.25, and 3743.75)

Moratorium on the issuance and geographic transfer of fireworks licenses extended

Prior law imposed a moratorium, ending on December 15, 2008, on the issuance of a license as a fireworks manufacturer to a person for a particular fireworks plant or a license as a fireworks wholesaler to a person for a particular location unless the person possessed such a license for that plant or location immediately prior to June 29, 2001. Prior law also imposed a moratorium, ending on December 15, 2008, on the geographic transfer of a fireworks manufacturer or wholesaler license to any location other than the location for which the license was issued immediately prior to June 29, 2001. The act extends both of these moratoria from December 15, 2008, until December 15, 2011. (R.C. 3743.75(A).)

The act also specifies that a license that a person possessed immediately prior to June 29, 2001, includes a wholesale fireworks license that was issued in place of a fireworks manufacturer license that existed prior to that date and was requested to be canceled by the license holder pursuant to a provision of ongoing law that allows a manufacturer license to be canceled and replaced with a wholesaler license (R.C. 3743.75(D)(3)).

Conditions for the geographic transfer of a fireworks license

Under continuing law, as an exception to the moratorium on the geographic transfer of licenses described above, a wholesaler license may be transferred from one geographic location to another within the same municipal corporation or within the unincorporated area of the same township, but only if the transfer meets a number of specified conditions. One of these conditions is that the licensee requests transfer of the license because the existing facility poses an immediate hazard to the public. The Governor vetoed a provision that would have removed this particular condition. (R.C. 3743.17(F)(1)(d).)

Standards for display of fireworks in a fireworks showroom

Continuing law requires that a licensed fireworks manufacturer, wholesaler, or exhibitor must bring fireworks showroom structures, to which the public may have any access and in which employees are required to work, into compliance with various safety requirements. One of these requirements is that a fireworks showroom that is constructed, or upon which expansion is undertaken, on or after June 30, 1997, must be equipped with interlinked fire detection, fire suppression, smoke exhaust, and smoke evacuation systems approved by the Superintendent of

the Division of Industrial Compliance within the Department of Commerce. The Governor vetoed a provision that would have provided that this requirement does not apply if a licensee conducts sales only on the basis of defused representative samples in closed and covered displays within a fireworks showroom. (R.C. 3743.25(A)(1).)

Continuing law also requires that a fireworks showroom structure that existed on June 30, 1997, had to be retrofitted on or before July 1, 1998, with interlinked fire detection, fire suppression, smoke exhaust, and smoke evacuation systems approved by the Superintendent of the Division of Industrial Compliance. If, however, meeting these retrofitting requirements would constitute an extreme financial hardship that would force a licensee to terminate business operations, the licensee must conduct sales only on the basis of defused representative samples in closed and covered displays within a fireworks showroom. The Governor vetoed a provision that also would have provided that if a licensee voluntarily elects to decline to meet the retrofitting requirements, the licensee must conduct sales only on the basis of defused representative samples in closed and covered displays within a fireworks showroom. (R.C. 3743.25(A)(4)(b).)

Fire barrier wall

Continuing law requires that storage areas for fireworks that are in the same building where fireworks are displayed and sold to the public must be separated from the areas to which the public has access by an appropriately rated fire wall. The Governor vetoed a provision that would have changed this reference to an appropriately rated fire *barrier* wall. (R.C. 3743.19(J).)

Continuing education for realtors

(R.C. 4735.10 and 4735.141)

The act removes the former prohibition on the Ohio Real Estate Commission from adopting standards for continuing education courses of study for real estate brokers and salespersons that require successful passage of an examination as a condition for the successful completion of a course of study. The act also removes the authorization for a continuing education course provider, nevertheless, to administer examinations to students in order to test the effectiveness of a course of study.

Creation of B-2a and S permits and regulation of wine sales

(R.C. 4301.24, 4303.03, 4303.071, 4303.232, and 4303.233)

Creation of B-2a permit

The act creates the B-2a permit, which may be issued to a person that manufactures wine, is the brand owner or United States importer of wine, or is the designated agent of a brand owner or importer for all wine sold in Ohio for that owner or importer. If the person resides outside Ohio, the person must comply with the requirements governing the issuance of licenses or permits that authorize the sale of intoxicating liquor by the appropriate authority of the state in which the person resides or by the Tax and Trade Bureau in the United States Department of the Treasury. A B-2a permit, however, must only be issued to a manufacturer of wine that is entitled to a tax credit under federal regulation 27 C.F.R. 24.278 and that produces less than 150,000 gallons of wine per year. The fee for the B-2a permit is $25.

A B-2a permit holder may sell wine to a retail permit holder, but a B-2a permit holder that is a wine manufacturer may sell to a retail permit holder only wine that the B-2a permit holder has manufactured.

A B-2a permit holder must renew the permit in accordance with the provisions of continuing law that govern the renewal of liquor permits, but the renewal is not subject to the requirements of continuing law that notice be given to municipal corporations, counties, and townships regarding the renewal and provisions allowing those political subdivisions to request a hearing by the Division of Liquor Control on the renewal of the permit. A B-2a permit holder must collect and pay all applicable taxes relating to the delivery of wine to a retailer, including, but not limited to, state and local taxes levied on wine sales and state retail sales and use taxes. A B-2a permit holder must comply with the Liquor Control Law and any rules adopted by the Liquor Control Commission.

The act specifies that a provision of continuing law that generally prohibits an alcoholic beverage manufacturer from having a financial interest in a wholesale distributor does not prohibit a wine manufacturer from securing or holding a B-2a permit or permits and operating as a wholesale distributor.

Creation of S permit

The act also creates the S permit, which may be issued to a person that manufactures wine, is the brand owner or United States importer of wine, or is the designated agent of a brand owner or importer for all wine sold in Ohio for that owner or importer. If the person resides outside Ohio, the person must comply

with the requirements governing the issuance of licenses or permits that authorize the sale of intoxicating liquor by the appropriate authority of the state in which the person resides or by the Tax and Trade Bureau in the United States Department of the Treasury. An S permit, however, must only be issued to a manufacturer of wine that is entitled to a tax credit under federal regulation 27 C.F.R. 24.278 and that produces less than 150,000 gallons of wine per year. The fee for the S permit is $25.

An S permit holder may sell wine to a personal consumer by receiving and filling orders that the personal consumer submits to the permit holder, but an S permit holder may sell to a personal consumer only wine that the S permit holder has manufactured. The act defines "personal consumer" to mean an individual who: (1) is at least 21 years of age, (2) is an Ohio resident, (3) does not hold a permit issued under the Liquor Control Law, and (4) intends to use wine purchased for personal consumption only and not for resale or other commercial purposes.

An S permit holder must renew the permit in accordance with the provisions of continuing law that govern the renewal of liquor permits, but the renewal is not subject to the requirement of continuing law that notice be given to municipal corporations, counties, and townships regarding the renewal and provisions allowing those political subdivisions to request a hearing by the Division of Liquor Control on the renewal of the permit.

The Division of Liquor Control may refuse to renew an S permit for any of the reasons for which it may refuse to renew a retail permit under continuing law or if an S permit holder fails to: (1) collect and pay all applicable taxes, (2) pay the permit fee, or (3) comply with the act's provisions or any rules adopted by the Liquor Control Commission. An S permit holder must collect and pay all applicable taxes relating to the delivery of wine to a personal consumer, including, but not limited to, state and local taxes levied on wine sales and state retail sales and use taxes.

An S permit holder must send a wine shipment that has been paid for by a personal consumer to the personal consumer via the holder of an H permit (a motor vehicle carrier). Before sending a wine shipment to a personal consumer, an S permit holder, or an employee of the S permit holder, must make a bona fide effort to ensure that the personal consumer is at least 21 years of age. The wine shipment must be shipped in a package that clearly has written on it in bold print the words "alcohol enclosed." No person must fail to comply with those requirements. Upon delivering a wine shipment to a personal consumer, the H permit holder, or an employee of an H permit holder, must verify that the personal consumer is at least 21 years of age by checking the personal consumer's driver's or commercial driver's license or state identification card.

An S liquor permit holder must keep a record of each wine shipment that the permit holder sends to a personal consumer. The records must be used for all of the following:

(1) To provide a copy of each wine shipment invoice to the Tax Commissioner in a manner prescribed by the Tax Commissioner. The invoice must include the name of each personal consumer that purchased wine from the S liquor permit holder in accordance with the act and any other information required by the Tax Commissioner.

(2) To provide annually in electronic format by electronic means a report to the Division of Liquor Control. The report must include the name and address of each personal consumer that purchased wine from the S permit holder in accordance with the act, the quantity of wine purchased by each personal consumer, and any other information the Division requests. The Division must prescribe and provide an electronic form for the report and must determine the specific electronic means that the S permit holder must use to submit the report.

(3) To notify a personal consumer of any health or welfare recalls of the wine that the personal consumer has purchased.

Limit on purchase of wine by family household

The act prohibits any family household from purchasing more than 24 cases of nine-liter bottles of wine in one year.

Modification of A-2 liquor permit

Under law retained by the act, an A-2 liquor permit may be issued to a manufacturer: (1) to manufacture wine from grapes or other fruits, (2) to import and purchase wine in bond for blending purposes, the total amount of wine so imported during the year covered by the permit not to exceed 40% of all the wine manufactured and imported, (3) to manufacture, purchase, and import brandy for fortifying purposes, and (4) to sell those products either in glass or container for consumption on the premises where manufactured and to wholesale permit holders under the rules adopted by the Division of Liquor Control. Under former law, an A-2 liquor permit also could be issued to a manufacturer to sell wine and wine products for home use and to retail permit holders. The act eliminates the authority for A-2 liquor permit holders to sell wine and wine products for home use and to retail permit holders. The act, however, authorizes A-2 liquor permit holders to sell wine and wine products in sealed containers for consumption off the premises where manufactured.

Under law retained in part by the act, the fee for an A-2 liquor permit is $126. The act lowers the fee to $76.

Manufacture, sale, and transport of ethanol or ethyl alcohol for use as fuel

(R.C. 4301.20)

Law unchanged by the act specifies that the Liquor Control and Liquor Permits Laws do not prevent certain actions or activities. The act adds that those Laws do not prevent the manufacture, sale, and transport of ethanol or ethyl alcohol for use as fuel. For purposes of that provision, "ethanol" means fermentation ethyl alcohol derived from agricultural products, including potatoes, cereal, grains, cheese whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources that meet all of the specifications in the American Society for Testing and Materials Specification D 4806-88 and is denatured as specified in federal regulations.

OFFICE OF CONSUMERS' COUNSEL (OCC)

- Repeals the provision that (1) prohibited the Consumers' Counsel from operating a telephone call center for consumer complaints and (2) required the Counsel to forward telephoned complaints against utilities to the Public Utilities Commission.

Consumers' Counsel call center

(R.C. 4911.021)

Continuing law expressly requires the Public Utilities Commission (PUCO) to operate a telephone call center for consumer complaints against any public utility by any person, firm, or corporation (R.C. 4905.261, not in the act). Prior law prohibited the Consumers' Counsel from operating a telephone call center for consumer complaints and required the Consumers' Counsel to forward any calls received concerning consumer complaints to the PUCO's call center. The act repeals the provision that prohibited the Consumers' Counsel from operating a call center and required the forwarding of telephoned complaints to the PUCO.

STATE DENTAL BOARD (DEN)

- Requires the State Dental Board, not later than 180 days after the act's effective date, to determine whether basic life-support training certified by the American Safety and Health Institute meets national standards.

- Requires the Board to accept training certified by the American Safety and Health Institute as meeting requirements for training of dental hygienists if the Board determines that the Institute's training meets national standards and is equivalent to the training certified by the American Red Cross and the American Heart Association.

Dental Hygienist CPR Training Study

(R.C. 4715.251)

Prior law required that dental hygienists complete a basic life-support training course certified by the American Red Cross or the American Heart Association.

The act adds the requirement that the State Dental Board, not later than 180 days after the act's effective date, determine whether basic life-support training certified by the American Safety and Health Institute meets national standards. The Board must compare the training certified by the Institute with the training certified by the American Red Cross and the American Heart Association.

The act requires the Board to accept training certified by the American Safety and Health Institute if the Board determines that the Institute's training meets national standards and is equivalent to the training certified by the American Red Cross and the American Heart Association.

DEPARTMENT OF DEVELOPMENT (DEV)

- Creates the International Trade Cooperative Projects Fund.

- Creates the Travel and Tourism Cooperative Projects Fund consisting of all grants, gifts, and contributions made to the Director of Development for marketing and promotion of travel and tourism within Ohio.

- Creates the Energy Projects Fund consisting of nonfederal revenue remitted to the Director for the purpose of energy projects, and requires the Department of Development to use the money in the Fund for energy projects and to pay the costs incurred in administering the projects.

- Consolidates separate tax incentive administrative fee funds into a single Tax Incentive Programs Operating Fund consisting of continuing fees charged under the job creation, job retention, community reinvestment area, and enterprise zone programs.

- Amends the definition of "full-time employee" for purposes of the Tax Credit Authority's job creation grant program to include persons who are employed full time, but are on family or medical leave under the federal Family and Medical Leave Act of 1993.

- Authorizes the Ohio Capital Access Loan Program to continue to make loans after the June 30, 2007, deadline in prior law.

- Specifies that if a district public works integrating committee receives only one application in any given year regarding a grant or loan from the Clean Ohio Fund for a brownfield cleanup project, the chair of the integrating committee or the chair of the executive committee of the integrating committee, as applicable, may forward that application to the Clean Ohio Council as the district's top priority project for that year without a vote of the full integrating committee or executive committee, as applicable.

- Specifies that emergency shelter care programs for unaccompanied youth ages 17 and under are eligible to receive Ohio Housing Trust Fund grants, loan guarantees, and loan subsidies.

- Requires the Director of Development to convene a task force to study local, regional, and state economic development incentives, to submit a report to the Speaker of the House of Representatives and the President of the Senate on the findings of the task force, and to make recommendations for improvements to the incentives.

International Trade Cooperative Projects Fund

(R.C. 122.051)

Under continuing law, the Director of Development is authorized to carry out certain functions for the purpose of encouraging, promoting, and assisting trade and commerce between Ohio and foreign nations. The act creates the International Trade Cooperative Projects Fund in the state treasury which will receive money from private and nonprofit organizations involved in cooperative agreements related to foreign investment and cash transfers from other state agencies or any state or local government.

Travel and Tourism Cooperatives Projects Fund

(R.C. 122.071)

The act creates the Travel and Tourism Cooperative Projects Fund in the state treasury consisting of all grants, gifts, and contributions made to the Director of Development for marketing and promotion of travel and tourism within Ohio pursuant to continuing law.

Energy Projects Fund

(R.C. 122.076)

The act creates the Energy Projects Fund in the state treasury consisting of nonfederal revenue that is remitted to the Director of Development for the purpose of energy projects and requires the Department of Development to use the money in the Fund for energy projects and to pay the costs incurred in administering the projects.

Tax Incentive Programs Operating Fund

(R.C. 122.17, 122.171, 122.174, 3735.672, and 5709.68; Section 263.20.50)

Under continuing law, rules established by the Director of Development may provide for recipients of tax credits under the job creation, job retention, community reinvestment area, and enterprise zone programs to pay a fee to cover the costs of administering each program. Under prior law, those fees were credited to separate funds.

Under the act, the fees are credited to a new and single fund, the Tax Incentive Programs Operating Fund. The fees must continue to be used to pay for the costs of administering the programs.

The Director of Budget and Management is directed to transfer the cash balance in the Job Creation Tax Credit Operating Fund to the Tax Incentive Programs Operating Fund, cancel appropriations against the former fund, and reestablish them against the new fund. The amounts of the reestablished encumbrances are appropriated. The State Community Reinvestment Area Program Administration Fund and the State Enterprise Zone Program Administration Fund are eliminated.

Job creation grant program--definition of "full-time employee"

(R.C. 122.17)

Continuing law establishes a job creation grant program administered by the Tax Credit Authority. The grant program takes the form of refundable credits against specified taxes. For purposes of the program, "full-time employee" is defined to mean an individual who is employed for consideration for at least an average of 35 hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment, or who is employed for consideration for such time or renders such service, but is on active duty reserve or Ohio National Guard service. The act amends the definition to include persons who are employed full time, but are on family or medical leave under the federal Family and Medical Leave Act of 1993.

Ohio Capital Access Loan Program

(R.C. 122.602)

Under continuing law, the Director of Development administers the Capital Access Loan Program to assist participating financial institutions in making program loans to eligible businesses for working capital or fixed asset financing purposes. Prior law, however, prohibited the Director from approving any capital access loan made after June 30, 2007, or entering into a participation agreement with any financial institution after that date. The act removes that prohibition, thereby allowing the Program to continue to make loans.

Clean Ohio Fund--integrating committee procedures

(R.C. 122.652)

Continuing law establishes requirements and procedures regarding applications for grants and loans from the Clean Ohio Fund. Money in that Fund is used to provide financial assistance for the cleanup of brownfields throughout the state. In order to apply for financial assistance from the Fund, an applicant for a loan or grant must submit an application to the applicable local public works integrating committee. Public works integrating committees are public bodies

established in continuing law that represent specified geographic regions within Ohio for the purpose of determining project funding under certain state infrastructure funding programs. An integrating committee that receives applications for funding from the Clean Ohio Fund is required to choose not more than six applications annually that it determines merit funding and must forward those applications and all accompanying information to the Clean Ohio Council. The Clean Ohio Council is a state body that makes the final decisions regarding which projects receive funding from the Clean Ohio Fund. Continuing law requires the integrating committee or the executive committee of the integrating committee to make decisions regarding which applications from the region represented by the integrating committee to forward to the Clean Ohio Council.

The act provides that if an integrating committee receives only one application in any given year, the chair of the integrating committee or, if required under continuing law, the chair of the executive committee of the integrating committee may forward that application to the Clean Ohio Council as the district's top priority project for that year without a vote of the full integrating committee or executive committee, as applicable. However, the chair of the integrating committee or chair of the executive committee, as applicable, must provide written notice of the chair's intent to forward the application to each member of the integrating committee or executive committee, as applicable, not later than 15 days prior to forwarding the application.

Ohio Housing Trust Fund

(R.C. 174.03)

Under continuing law the Department of Development and the Ohio Housing Finance Agency provide grants, loan guarantees, and loan subsidies using Ohio Housing Trust Fund monies for activities relating to housing for low- and moderate-income families and individuals, including acquiring, financing, constructing, leasing, rehabilitating, remodeling, improving, and equipping publicly or privately owned housing. The act specifies that those activities may include emergency shelter care programs for unaccompanied youth ages 17 and under.

Study of economic development incentives

(Section 701.10)

The act requires the Director of Development, not later than 30 days after the provision's effective date, to convene a task force composed of experts from the economic development community, local governments, and consultants involved in the site selection and negotiation process to study the economic

development incentives that are available to local governments, regional groups, and the state. In addition, the act requires the Director, not later than January 1, 2008, to submit a written report to the Speaker of the House of Representatives and the President of the Senate on the findings of the task force and to make recommendations for changes to Ohio's local, regional, and state economic development incentives so that those incentives are more effective in strengthening Ohio's economy and are less complex, faster to implement, and more transparent to Ohio's taxpayers.

DEPARTMENT OF EDUCATION (EDU)

I. School Funding

Base-cost funding

- Prescribes the per pupil base-cost formula amount as $5,565 for FY 2008 and $5,732 for FY 2009.
- Eliminates the cost-of-doing-business factor from the base-cost formula.
- Increases by 3% each year the hourly rate used to calculate the base funding supplement for academic intervention.
- Retains in both years the 75% phase-in percentage for the base funding supplement for professional development.
- Eliminates the base-cost funding guarantee, which specifies that a district's state base-cost payment will not be lower than the lesser of its FY 2005 state aggregate base-cost payment or its FY 2005 per pupil base-cost payment.
- Specifies that a district's state base-cost payment includes not only the base-cost calculation after the 23-mill local share ("charge-off") is deducted, but also the district's state poverty-based assistance and parity aid.

State share percentage

- Adds state poverty-based assistance and parity aid payments to the calculation of each school district's "state share percentage," which is

used to calculate some of the district's categorical funding amounts, such as special education and vocational education funding.

Parity aid

- Changes the calculation of state parity aid to equalize 8 mills in the 410 lowest-wealth districts in FY 2008 and 8.5 mills in the 367 lowest-wealth districts in FY 2009.

Poverty-based assistance

- Eliminates the guarantee that every school district will receive at least the same amount of poverty-based assistance that it received in FY 2005.

- Adds a new poverty-based assistance subsidy for FY 2008 and FY 2009 for assistance in closing the achievement gap in districts that have an "academic distress percentage" equaling or exceeding the statewide academic distress percentage.

- Retains the 70% phase-in percentage in both fiscal years for the subsidy for services to limited-English proficient students and continues basing the subsidy on the number of such students reported for the 2002-2003 school year.

- Requires each district that receives more than $10,000 in poverty-based assistance to annually report to the Department of Education how it deployed the funds.

- Requires the Department of Education to make recommendations to a school district for deploying poverty-based assistance funds in a more effective manner, if the district does not meet adequate progress standards as defined by the Department.

- Revises the spending requirements for poverty-based assistance.

Special education funding

- Continues, in both years, to apply the 90% phase-in to the six prescribed special education weights, which has been applied since FY 2005.

- Increases the catastrophic threshold amount for special education and related services to $27,375 (from $26,500) for categories two through five and to $32,850 (from $31,800) for category six.

Transportation funding

- Specifies a 1% across-the-board increase in each school district's payment for regular student transportation in FY 2007 and FY 2008.

Transitional aid

- Provides additional state transitional aid in FY 2008 and FY 2009 to prevent any school district's state funding for the current fiscal year from being less than it was in the previous fiscal year.

Other school funding provisions

- Formally specifies that a district's formula ADM is the final number verified by the Superintendent of Public Instruction, based on the number reported by the district, and formally authorizes the Superintendent to adjust a district's formula ADM to correct errors.

- Removes from the revenue considered to be received by a school district, for purposes of calculating the state charge-off supplement ("gap aid"), the amount the district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost because of the phase-out of the tangible personal property tax.

- Eliminates the reappraisal guarantee that paid an additional subsidy to prevent a school district from losing state funds in the first year after the county auditor has reappraised or updated the valuation of taxable property.

- Allows a joint vocational school district that exceeds the permitted number of "calamity days" in the 2006-2007 school year to receive state funding in FY 2008, if the excess calamity days equals the number of days the district's career center was closed for fire damage in May 2007.

- Revises the base for recalculating a school district's payments if necessary due to tax refunds paid to certain taxpayers, reductions to valuation or assessment complaints, or the creation of new tax exemptions.

- Specifies that payment to a school district based on a state aid recalculation be made between June 1 of the current fiscal year and July 31 of the following fiscal year, as determined by the Director of Budget and Management (instead of on or before July 31 of the following fiscal year).

- Includes the Office of Budget and Management as a recipient of school district tax information that the Tax Commissioner and the Department of Development provide to the Department of Education.

- Requires the Department of Education to submit an annual report to the General Assembly of each school district's aggregate employee salary and benefits expenditures.

- Establishes the Biodiesel School Bus Program under which the Department of Development awards grants to offset the incremental costs incurred by school districts using biodiesel instead of petroleum diesel for pupil transportation.

II. Community Schools

Moratorium

- Permits the establishment of a start-up community school after June 30, 2007, only if the school's governing authority contracts with an operator that manages other schools in the United States that perform at a level higher than academic watch.

- Limits an operator to managing one start-up community school established after June 30, 2007, for each school it manages nationwide that performs at a level higher than academic watch.

- Permits an early college high school run by a Big-Eight school district in partnership with a private university to become a start-up community school in the 2007-2008 school year if (1) the school's governing authority and sponsor adopt and sign a contract by July 9, 2007, (2) the governing authority contracts with the private university to be the school's operator, and (3) the school continues to provide the same educational program.

- Permits the governing authority of a start-up community school that is not managed by an operator to open another community school in the

2007-2008 school year if (1) the governing authority filed a copy of its contract with the new school's sponsor with the Superintendent of Public Instruction prior to March 15, 2006, and (2) the current school has been open for at least four years, is rated excellent or effective, and made adequate yearly progress for the previous school year.

- Permits the governing authority of a start-up community school that is not managed by an operator to contract with the same sponsor to open a K to 6 community school in the same school district in the 2008-2009 school year, if (1) the governing authority files a copy of the sponsor contract with the Superintendent of Public Instruction by March 15, 2008, and (2) the current school has been open at least five years, made adequate yearly progress for the four school years prior to the 2006-2007 school year, and was rated excellent or effective and named a School of Promise for three of those school years.

- Prohibits a community school that opened for operation after May 1, 2005, from operating from a residential facility that receives and cares for children until July 1, 2009.

Sponsors

- Limits an educational service center (ESC) to sponsoring community schools that are located in a county within the ESC's territory or in a contiguous county, but allows an ESC that sponsors schools outside of that geographic area on the provision's effective date to continue to sponsor those schools.

- Requires that for an entity that sponsors or operates out-of-state schools to be approved to sponsor community schools in Ohio, at least one of those out-of-state schools must perform as well as Ohio schools in continuous improvement (rather than academic watch, as under prior law).

- Requires the sponsor of each community school to provide annual assurances to the Department of Education regarding the school's compliance with certain laws and the preparedness of the school's staff and facilities for the upcoming school year.

Unauditable community schools

- Requires the Auditor of State to provide notification of a finding that a community school is unauditable to the school, its sponsor, and the Department of Education, and to post the notification on the Auditor of State's web site.

- Prohibits the sponsor of an unauditable community school from entering into contracts with additional community schools until the Auditor of State completes a financial audit of the school.

- Requires the sponsor of an unauditable community school to provide the Auditor of State with a description of (1) the process the sponsor will use to understand the circumstances that led to the school becoming unauditable, (2) a plan for providing the Auditor of State with the necessary documentation to complete financial audits, and (3) the actions the sponsor will take to implement that plan.

- Specifies that if a community school fails to make progress in bringing its records into auditable condition within 90 days after being declared unauditable, the Department of Education must cease all state payments to the school until an audit is completed.

Transportation

- Permits a community school to transport its students with or without entering into a bilateral agreement with each student's resident school district.

- Requires the resident school district to consent to the community school's assumption of the transportation responsibility if the community school previously unilaterally assumed the responsibility and later relinquished it.

- Requires a community school that assumes the transportation responsibility to provide transportation for students of the same grade level and distance from school as would be eligible for transportation under the school district's transportation policy.

- Requires the Department of Education to pay community schools that unilaterally assume the transportation responsibility the per pupil amount

that otherwise would be paid to the student's resident school district for transportation.

Other community school provisions

- Requires community schools to conduct criminal records checks of their governing authority members.

- Bases the full-time equivalency of a community school student, for state funding calculations, on the percentage of the community school's total learning opportunities that were offered to the student, rather than the percentage of 920 hours of learning opportunities that were provided to the student as under prior law.

- Would have prohibited the Department of Education from withholding state payments to a community school for a particular student, on the basis of a school district's challenge, unless the school district provided evidence that the student should not be included in the community school's enrollment (VETOED).

- Permits a community school student to enroll in a career-technical program offered by the student's resident city, exempted village, or local school district and proportions state funding for that student between the community school and the resident district based on the time the student attends each school.

- Specifies that, when a community school permanently closes, any funds remaining after payment of debts must be paid to the Department of Education for redistribution to the resident school districts of the community school's students.

III. STEM Schools and STEM Programs of Excellence

STEM Subcommittee

- Establishes the STEM Subcommittee of the Partnership for Continued Learning.

- Authorizes the STEM Subcommittee to issue a request for proposals for the establishment of public Science, Technology, Engineering, and Mathematics (STEM) schools and to approve the establishment of and

award grants to up to five STEM schools (that will serve any of grades 6 to 12) to open for instruction in fiscal year 2009.

- Authorizes partnerships of public and private entities, that include a school district, higher education entities, and business organizations, to submit proposals to establish STEM schools.

- Authorizes the STEM subcommittee to award grants to STEM Programs of Excellence operated by school districts and community schools for any of grades K to 8.

- Requires the Partnership for Continued Learning, through the STEM Subcommittee, to work with an Ohio nonprofit enterprise selected by the Subcommittee to support the strategic and operational coordination of public and private STEM education.

STEM school governance

- Requires each STEM school to be under the oversight of a governing body that is responsible for hiring and setting the compensation of the school's administrative officers, teachers, and nonteaching employees.

STEM school employees

- Requires STEM school teachers to be "highly qualified," but allows individuals who do not hold an educator license but have at least a bachelor's degree or five years of work experience in the subject being taught to teach in a STEM school for up to 40 hours per week.

- Requires the State Board of Education to issue a two-year provisional and a professional educator license for teaching science, technology, engineering, or math in grades 6 to 12 in a STEM school.

- Authorizes the Partnership for Continued Learning, through the STEM Subcommittee, to make recommendations to the General Assembly and the Governor for training of STEM educators.

- Specifies that the state Civil Service Law does not apply to STEM schools.

- Specifies that teachers and nonteaching employees of STEM schools retain their collective bargaining rights.

- Requires STEM schools and their employees to participate in the State Teachers Retirement System and the School Employees Retirement System.

STEM school compliance with laws

- Applies to STEM schools many state laws governing school districts.

- Requires each STEM school governing body to provide annual assurances to the Department of Education regarding the school's compliance with certain laws and its preparedness for the upcoming school year.

STEM school academic accountability

- Requires the Department of Education to issue annual report cards for each STEM school in the same manner as other public schools.

- Requires each STEM school to comply with the state academic accountability system as it applies to public school buildings.

STEM school financial accountability

- Requires each STEM school to have a treasurer licensed by the State Board of Education.

- Requires the Auditor of State to audit each STEM school annually.

Other STEM school provisions

- Prohibits STEM schools from enrolling students who are not Ohio residents or establishing admission standards based on ability or achievement.

- Provides operational funding of STEM schools by counting their students in the enrollments of their resident school districts and then deducting and transferring per pupil funding to the STEM schools.

- Prohibits STEM schools from charging tuition, and specifies that they may not levy taxes or issue bonds backed by tax revenues.

- Requires school districts to transport STEM school students in the same manner required by law for private school students, if the STEM school's proposal does not provide for student transportation.

- Requires that STEM school students be permitted to participate in extracurricular activities offered by the schools of their resident school districts.

IV. Other Education Provisions

Scholarship programs

- Retains the Educational Choice Scholarship Pilot Program, the Cleveland Scholarship Program, and the Autism Scholarship Program.

- Would have created the Special Education Scholarship Pilot Program to provide scholarships for disabled children in grades K through 12 to attend alternative public or private special education programs in FY 2009 through FY 2014 (VETOED).

Early childhood education

- Establishes the Early Learning Initiative, paid for with Title IV-A (TANF) funds and jointly administered by the Ohio Department of Education and the Ohio Department of Job and Family Services, to provide early learning services to TANF-eligible children.

- Continues for the 2008-2009 biennium a GRF-funded program to support early childhood education programs offered by school districts and educational service centers to serve preschool children whose families earn up to 200% of the federal poverty guidelines.

- Eliminates the prohibition against a school district establishing a preschool program unless the district is eligible for poverty-based assistance and shows that other child care programs are not meeting its preschool needs.

- Postpones, from FY 2008 to FY 2010, the requirement that all teachers in state-funded early child education programs established prior to FY 2007 have associate degrees.

- Sets the following new deadlines for state-funded early childhood education programs established during or after FY 2007: (1) by FY 2012, all teachers must have associate degrees and (2) by FY 2013, half of the teachers must have bachelor's degrees.

Academic distress commissions

- Requires that the two members of an academic distress commission appointed by the president of the school district board be residents of the district.

- Requires each member of an academic distress commission to file financial disclosure statements with the Ohio Ethics Commission.

- Adds several procedural specifications for the operation of an academic distress commission.

- Requires each academic distress commission to adopt an academic recovery plan approved by the Superintendent of Public Instruction.

Data and testing

- Repeals the requirement for the Department of Education to immediately withhold payments from school districts and community schools that fail to properly report data to the Education Management Information System (EMIS), and replaces it with a series of sequential actions (including withholding payments) against a school district, community school, educational service center, or other educational entity that fails to properly report EMIS data.

- Permits the Department to release some funds withheld from an entity if the entity corrects its EMIS data reporting problems.

- Allows the Department to arrange for an audit of an entity's data reporting practices any time the Department believes the entity has not made a good faith effort to properly report EMIS data.

- Limits the highest performance rating a school district or building may receive based on the percentage of its students who do not take all required achievement tests, with an exception for community schools operating dropout recovery and prevention programs.

- Allows school districts that mistakenly reported a 0% graduation rate for the 2005-2006 school year to correct that data for purposes of the August 2007 district and building report cards.

- Requires foreign exchange students to pass the Ohio Graduation Test in social studies to qualify for the alternative conditions for a high school diploma.

- Revises the deadline for school districts to submit achievement tests to the scoring company.

- Requires, upon the release of the elementary achievement tests as public records, that the Department of Education inform school districts of the state academic content standard and corresponding benchmark to which each redacted test question relates, except for field test questions.

Physical education standards

- Requires the State Board of Education, by December 31, 2007, to adopt the standards for physical education in grades K to 12 developed by the National Association for Sport and Physical Education or to adopt its own physical education standards in those grades.

- Eliminates the requirement that state physical education standards and model curricula are subject to approval by concurrent resolution of both houses of the General Assembly.

- Requires the Department of Education to hire a full-time physical education coordinator by October 31, 2007.

- Requires each school district, community school, and chartered nonpublic school to report to the Department of Education by October 31, 2007, the number of minutes and classes per week of physical education provided to students in each of grades K to 8 in the 2006-2007 school year and scheduled to be provided in 2007-2008.

Chartered nonpublic schools

- Requires the governing authority of a chartered nonpublic school to provide notice before closing the school.

- Requires the chief administrator of a closed chartered nonpublic school to deposit the school's records with either its accrediting association or the school district that received state auxiliary services funds on behalf of the school's students.

- Permits the school district receiving the records of a closed chartered nonpublic school to deduct from state auxiliary services funds a one-time payment for the cost of storing the records.

- Requires a school district to label equipment or materials it purchases or leases with state auxiliary services funds for loan to a chartered nonpublic school, unless the district determines that they are consumable or have a value of less than $200.

- Adds social work to the list of services that may be provided to students of chartered nonpublic schools with state auxiliary services funds.

- Increases from $275 to $300 the per pupil cap on reimbursement payments to chartered nonpublic schools for mandated administrative expenses.

Other provisions

- Updates statutory language regarding the provision of special education and related services for children with disabilities to align with federal law.

- Qualifies all public and chartered nonpublic school teachers who hold a valid teaching certification issued by the National Board for Professional Teaching Standards for an annual $2,500 stipend.

- Requires that each school district board specify the manner and deadline for a parent or student to notify the board of intent to appeal the student's suspension or expulsion from school.

- Requires the Chancellor of the Board of Regents, in collaboration with the Department of Education, to identify which "adult career-technical education programs" to move from the Department to the Board of Regents, and to move those programs by January 1, 2009.

- Requires the Superintendent of Public Instruction to appoint a Director of Agricultural Education responsible for disseminating information on agricultural education to school districts.

- Requires the Department of Education to maintain an appropriate number of employees focusing on agricultural education, at least three of whom are program consultants who provide regional assistance to school districts where one may coordinate local Future Farmers of America activities.

- Changes the biology requirement in the Ohio Core curriculum to "life sciences."

- Requires the Department of Education, by December 31, 2008, to report to the General Assembly recommendations for enhancing regional collaboration in pupil transportation.

- Permits a school district to transport a student who does not reside in the district to a nonpublic school, if (1) the student's resident district is not required to transport the student and (2) the parent agrees to reimburse the nonresident district for costs that exceed the amount the district receives from the state.

- Authorizes the Department of Education to determine that a school district other than the one named in a juvenile court's initial order, when removing a child from the child's home or when placing the child with someone other than the child's parent, is responsible for paying the cost of educating the child (rather than merely to recommend such a change to the juvenile court).

- Permits real property owners within a portion of a school district in which no voters reside to petition for the State Board of Education to transfer that portion to an adjoining school district.

- Until February 29, 2008, permits a countywide local school district to dispose of real property by private sale to a community action agency that operates an early childhood education program within the district, in lieu of selling the property at public auction or to a community school or another government entity, if certain conditions are satisfied.

- Implements, with substantial changes, the provisions in Am. Sub. H.B. 66 (biennial budget act) of the 126th General Assembly relative to health care plans for public school employee personnel.

- Permits a Council of Governments (1) comprised mainly of city, local, or exempted village school districts and (2) approved as an information technology center within the Ohio Education Computer Network to issue special obligation securities for the purpose of acquiring, constructing, or improving real or personal property for the use of the council or one or more of its members.

- Would have granted authority to boards of education of two or more city, local, or exempted village school districts to create, by agreement, a student special services district (SSSD) to fund special education services and behavioral health services for person with special needs for the students enrolled in those districts and their immediate family members (VETOED).

I. School Funding

State funding for school districts

The act makes changes to the codified laws, contained mostly in R.C. Chapter 3317., that prescribe the system for state funding of school districts and other entities that provide primary and secondary education. A more detailed analysis of the school funding system is available in the LSC Redbooks and Final Fiscal Analysis for the Department of Education, published on the LSC web site at www.lsc.state.oh.us/budgetdocuments.html. Other school funding background is available online at www.lsc.state.oh.us/schoolfunding/index.htm.

The following table provides a synopsis of the changes the act makes to school funding laws to implement the system. Please consult the LSC Redbook and Final Fiscal Analysis for the Department of Education for details.

SYNOPSIS OF THE ACT'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Base-cost per pupil formula amount (R.C. 3317.012(A) and (B))	Continuing the "building blocks" methodology, with one variation, calculates the base-cost per pupil formula amount as $5,565 for FY 2008 and $5,732 for FY 2009.
Cost-of-doing-business factor (R.C. 3317.02, 3317.022, and 3317.16; conforming changes in R.C. 3313.98, 3314.08, 3317.014, 3317.023, 3317.0217, 3317.20, and 3365.01)	Eliminates the cost-of-doing-business factor from the base-cost formula. (Prior law had phased the factor down from a 7.5% maximum variation in FY 2005 to 5.0% in FY 2006 and 2.5% in FY 2007.)
Formula ADM (R.C. 3317.01, 3317.02, and 3317.03)	Formally specifies that a district's formula ADM is the final number verified and adjusted by the Superintendent of Public Instruction, based on the number reported by the district for October. (See '***State verification of district formula ADM***' below.)
Base funding supplements (R.C. 3317.012(C))	Increases by 3% each year (from $20.40 in FY 2007 to $21.01 in FY 2008 and $21.64 in FY 2009) the hourly rate used to calculate the base funding supplement for academic intervention. Retains in both years the 75% phase-in percentage for the base funding supplement for professional development. This is the same phase-in percentage applied to this supplement in FY 2007. (The FY 2006 phase-in was 25%.) Also retains, unchanged, the calculation of the base funding supplements for data-based decision making.
Base-cost funding guarantee (R.C. 3317.022 and 3317.16; conforming changes in R.C. 3313.98, 3314.08, 3317.023, 3317.20, and 3365.01)	Eliminates the base-cost funding guarantee, which specified that a district's state base-cost payment would not be lower than the lesser of its FY 2005 state aggregate base-cost payment or its FY 2005 per pupil base-cost payment. (This guarantee was distinct from Transitional Aid, summarized below.)

SYNOPSIS OF THE ACT'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Base-cost calculation (R.C. 3317.022(A), 3317.029(B), and 3317.0217)	Specifies that a district's state base-cost payment includes not only the base-cost calculation after the 23-mill local share ("charge-off") is deducted, but also the amount of state poverty-based assistance and parity aid calculated for the district.
State share percentage (R.C. 3317.022(A)(1) and (B)(2))	Adds state poverty-based assistance and parity aid payments to the calculation of each school district's "state share percentage," which is used to calculate some of the district's categorical funding amounts, such as special education and vocational education funding. Under prior law, the calculation reflected only the percentage of a district's aggregate calculated base cost that is covered by state funds after the district's 23-mill charge-off is deducted. Under the act, the poverty-based assistance and parity aid payments are added to both the numerator and the denominator of the state share percentage calculation, so the percentage represents the proportion of state funds paid for base cost, poverty-based assistance, and parity aid after the 23-mill charge-off.
Parity aid (R.C. 3317.0217)	Changes the calculation of state parity aid so that the 410 lowest-wealth districts qualify in FY 2008 and the 367 lowest-wealth districts qualify in FY 2009. The subsidy equalizes what 8 mills, in FY 2008, and 8.5 mills, in FY 2009, will generate in a particular district with what that millage will generate in the 123rd wealthiest district. (Previously, the 490 lowest-wealth districts qualified for the subsidy, and the subsidy equalized 7.5 mills.)
Poverty-based assistance to school districts (R.C. 3317.02(E) and 3317.029; conforming changes in R.C. 3314.08, 3317.016, and 3317.017)	Eliminates the FY 2005 guarantee. Revises the calculation of each district's poverty index by using the average formula ADM from the past three years, rather than the average for the current and previous two fiscal years. Adds a new subsidy for FY 2008 and FY 2009 for assistance in closing the achievement gap in districts that, in either year, have a poverty index greater than or equal to 1.0 and an "academic distress percentage" equaling or exceeding the statewide academic distress percentage. (See "***New closing-the-achievement-gap payment***" below.)

SYNOPSIS OF THE ACT'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
	Increases the hourly rate used to calculate the academic intervention subsidy by 3% each year, to equal the hourly rates for the base funding supplement for academic intervention. Renames the "class-size reduction" subsidy as a payment "for increased classroom learning opportunities," and increases the statewide average teacher salary that is a component of the formula by 3.3% each year, to equal the increased teacher salaries used to calculate the base-cost per pupil formula amount. Retains the 70% phase-in percentage in both fiscal years for the subsidy for services to limited-English proficient students, and continues basing the payment on the number of limited-English proficient students reported on each district's report card for the 2002-2003 school year. Applies no phase-in percentage to the payments for professional development, dropout prevention, and community outreach. (Prior law also specified no phase-in of these payments after FY 2007.) Requires each district that receives more than $10,000 in poverty-based assistance annually to report to the Department of Education how it deployed the funds. (See "***Reports on deployment of poverty-based assistance***" below.) Revises the spending requirements (see "***Poverty-based assistance spending requirements***" below).
Special education weighted funding (R.C. 3317.013)	Continues, in both years, to apply the 90% phase-in to the six prescribed special education weights, which has been applied since FY 2005. Changes the deadline, from May 30 to December 30, for the annual report the Department of Education must submit to the Office of Budget and Management itemizing the state and federal calculations of special education funding for each school district.

SYNOPSIS OF THE ACT'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Special education catastrophic threshold (R.C. 3314.08(E), 3317.022(C)(3), and 3317.16(E))	Increases the catastrophic threshold amount for special education and related services to $27,375 for categories two through five (from $26,500 for FY 2006 and FY 2007) and to $32,850 for category six (from $31,800 for FY 2006 and FY 2007).
Speech-language services subsidy (R.C. 3317.022(C)(4))	Maintains the $30,000 personnel allowance, in effect since FY 2002 to calculate the subsidy for speech-language services.
Vocational education weighted funding (R.C. 3317.014)	Retains the weights prescribed for vocational (career-technical) additional weighted funding. Specifies a December 30 deadline for the Department of Education to submit its annual report itemizing the amount of state vocational education weighted funding that each school district spent for vocational education and associated services. The act also requires that the report be submitted to the Office of Budget and Management, instead of the Governor as under prior law, and specifies that the report accounts for spending in the prior fiscal year.
GRADS funding (R.C. 3317.024(N))	Maintains the $47,555 personnel allowance used since FY 2004 to calculate payments for GRADS ("Graduation, Reality, and Dual-Role Skills") for services to pregnant and parenting students.
Transportation funding (R.C. 3317.022(D); Section 269.20.80)	Specifies a 1% across-the-board increase in each school district's payment for regular student transportation in FY 2007 and FY 2008.
Charge-off supplement ("Gap Aid") (R.C. 3317.0216)	Removes from the revenue considered to be received by a school district, for purposes of calculating the state charge-off supplement, the amount the district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost because of the phase-out of the tangible personal property tax.

SYNOPSIS OF THE ACT'S SCHOOL FUNDING PROVISIONS	
FUNDING COMPONENT	**SYNOPSIS**
Reappraisal guarantee (R.C. 3317.04)	Eliminates the reappraisal guarantee that paid an additional subsidy to a qualifying school district to prevent it from losing state funds in the first year after the county auditor reappraised or updated the valuation of taxable property.
Transitional aid (Sections 269.30.80 and 269.30.90)	Provides additional state transitional aid in FY 2008 and FY 2009 to prevent any school district's state funding for the current fiscal year from being less than it was in the previous fiscal year.

Formula ADM

State verification of district formula ADM

(R.C. 3317.02(D) and 3317.03(C)(3) and (K))

A school district's formula ADM ("average daily membership") is an approximation of its full-time-equivalent enrollment. It is a component used to calculate several state subsidies to school districts. Each school district reports its formula ADM, and throughout the fiscal year the Department of Education makes corrections to the report and correspondingly adjusts the payments that are based on formula ADM.

A provision of prior law technically defined formula ADM as the figure reported by the school district, with no explicit mention of the Department's authority to ensure that the report is as accurate as possible. The act formally authorizes the Superintendent of Public Instruction, if the Superintendent determines that a component in a district's reported formula ADM is not correct, to order that the district's formula ADM be adjusted in the amount of the error. It also redefines "formula ADM" as being the final number verified by the Superintendent. Moreover, it clarifies the authority of the Department to adjust a district's formula ADM to account for its resident students enrolled in a community school for only a portion of the year.

Transitional aid calculations

(Section 269.30.80)

The act specifies that, in calculating a city, exempted village, or local school district's transitional aid payment base for FY 2008 and FY 2009, the

Department of Education must use the number of students reported by an entity actually providing educational services to the district's students, if those students attend school elsewhere but are counted in the district's formula ADM. For example, those might be attending a joint vocational school district, a community school, or a chartered nonpublic school with an Educational Choice scholarship.

Poverty-based assistance reports; Department recommendations

(R.C. 3317.029(C) and (Q))

The act requires each school district that is paid more than $10,000 in poverty-based assistance to submit to the Department of Education an annual report on how the district deployed the funds. The report is due by September 30, presumably covering the previous fiscal year, and must be submitted in the form and manner required by the Department. The act further states: "If a school district does not meet adequate progress standards as defined by the Department, the Department shall make recommendations to the district for deploying funds . . . in a more effective manner."

The act also retains the provision of law requiring each school district that receives Tier 2 or Tier 3 academic intervention payments to submit a plan to the Department describing how the district will deploy the funds. (Tier 2 academic intervention payments are available to districts with poverty indexes of 0.75 and higher, and Tier 3 payments are available to districts with poverty indexes of 1.5 or higher.[16])

Poverty-based assistance spending requirements

(R.C. 3317.029(J) and (M))

Prior law

Prior law restricted how districts may spend their poverty-based assistance. First, any district that received a payment for all-day kindergarten was required to use its poverty-based assistance to ensure that all-day kindergarten was provided

[16] The poverty index measures a school district's percentage of children receiving public assistance, compared to the statewide percentage. For example, a district with a poverty index of 1.0 has the same proportion of children living in families receiving public assistance as the state as a whole. A district with a poverty index of 0.25 has a proportion of children receiving public assistance that is 25% of the statewide proportion. A district with a poverty index of 1.5 has a proportion of children receiving public assistance that is 150% of the statewide proportion.

to the number of all-day kindergarten students children reported by the district. After that, spending guidelines differed based on the district's poverty index:

(1) Districts with poverty indexes of 1.0 or greater had to follow the individual spending guidelines established for the payments for academic intervention, limited-English proficient students, professional development, dropout prevention, and community outreach. They had to use whatever remained of their poverty-based assistance (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 had the effect of increasing the length of the school day or school year.

(2) The spending guidelines were not as strict for districts with poverty indexes less than 1.0. Payments for academic intervention, dropout prevention, and community outreach had to be spent for those purposes. The remainder of a district's payment could be spent on one or more services from an itemized list.

The act's single list of possible expenditures

The act somewhat loosens the restrictions and applies one set of spending options to all districts that receive more than $10,000 in poverty-based assistance. It retains the requirement that districts receiving payment for all-day kindergarten first assure that all-day kindergarten is provided to the number of students reported by the district. After that, a district may spend poverty-based assistance for any combination of the following:

(1) Services to students with limited-English proficiency through (a) hiring teachers or other personnel, (b) contracting for intervention services, or (c) providing other services to assist those students in passing the third-grade reading achievement test;

(2) Professional development for teachers and other licensed educational personnel, through programs identified by the Department of Education, in (a) data-based decision making, (b) standards-based curriculum models, (c) high quality professional development activities that are research-based, as defined by standards developed by the Educator Standards Board, or (d) "professional learning communities";

(3) Programs identified by the Department of Education for preventing at-risk students from dropping out of school;

(4) Hiring or contracting community liaison officers, attendance or truant officers, or safety and security personnel;

(5) Programs designed to ensure that schools are free of drugs and violence and have a disciplined environment conducive to learning, in accordance with safe school guidelines adopted by the State Board of Education;

(6) Academic intervention programs for students who have failed or are in danger of failing any of the state achievement tests, in accordance with student intervention guidelines adopted by the State Board. The act retains the law which provides that, except for a district that uses part or all of its academic intervention payment to help pay for all-day kindergarten as permitted, each district *must* use its academic intervention payment for academic intervention services for students who have failed or are in danger of failing the state achievement tests. That continued law also prohibits a district from entering into a collective bargaining agreement after June 30, 2005, that requires any other use for the academic intervention payment.

(7) Increasing the amount of instructional attention to children 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. The act specifies that if funds are used to hire licensed aides or paraprofessionals, those individuals must be "engaged in classroom activities."

(8) Early childhood programs or early learning programs, as defined by the Department;

(9) To furnish free of charge to students whose families participate in Ohio Works First instructional materials for which the district ordinarily charges a fee;

(10) Programs "designed to reduce nonacademic barriers to learning, in accordance with guidelines developed by the Department"; and

(11) Start-up costs associated with school breakfast programs.

Also, a district that receives poverty-based assistance, but not the all-day kindergarten payment, presumably could elect to use its payment to provide all-day kindergarten.

Waivers

The act permits a school district to apply to the Department for a waiver to spend poverty-based assistance for other programs. The district must specify on the waiver application its reason for the alternative expenditure and the intended benefits for disadvantaged students.

New closing-the-achievement-gap payment

(R.C. 3317.029(A)(10) to (13), (K), and (L))

The act establishes for FY 2008 and FY 2009 a new component of poverty-based assistance for "assistance in closing the achievement gap." In FY 2008, eligible districts are those with a poverty index greater than or equal to 1.0 where the "academic distress percentage" is greater than or equal to the academic distress percentage statewide. The academic distress percentage measures the percentage of school buildings that have been declared in academic watch or academic emergency in the most recent report cards issued by the Department of Education.

If a district receives the new closing-the-achievement-gap payment in FY 2008 and its academic distress percentage for FY 2009 increases (that is, its reported performance declines from the previous year), the district's payment in FY 2009 will be the same amount it received in FY 2008. On the other hand, if the district's academic distress percentage for FY 2009 decreases, the district will receive 3.5% more than it did in FY 2008. A district that does not qualify for a closing-the-achievement-gap payment in FY 2008 may qualify for one in FY 2009 due to an increase in its poverty index or academic distress index.

If a district's academic distress percentage increases from FY 2008 to FY 2009, the act restricts how this payment may be used in FY 2009. First, if an academic distress commission has been appointed for the district (see "***Academic distress commissions***," below), the district must use the money for the commission's necessary expenses. Second, remaining funds may be used only for one or a combination of the following, and only in "buildings with the highest concentration of need":

(1) Assistance in improving student performance;

(2) Professional development for teachers and administrators; and

(3) Recruiting and retaining teachers and administrators.

The act defines "buildings with the highest concentration of need" as those buildings that either have been designated as "in school improvement status" under the federal No Child Left Behind Act, or have percentages of students receiving assistance under Ohio Works First that is at least as high as the districtwide percentage. However, among the latter buildings, the district must give priority to those declared to be in a state of academic watch or academic emergency.

Special education payments to institutions

(R.C. 3317.201)

The act makes a nonsubstantive wording change regarding payments for special education to state institutions operated by the departments of Mental Health, Mental Retardation and Developmental Disabilities, Rehabilitation and Correction, and Youth Services. The act replaces the phrase "the Department of Education annually shall pay" with the phrase "for each fiscal year the Department of Education shall pay."

Joint vocational school district calamity days

(Section 269.60.70)

The act allows a joint vocational school district that exceeded five (the allowable number) of "calamity days" in the 2006-2007 academic year to receive state funding in fiscal year 2008, if the total number of excess calamity days is not more than the number of days in May 2007 that (1) the district's career center was closed for fire damage and (2) the district cancelled instruction to prepare alternate facilities for instruction.

Background

Under the state minimum school year, a school district is permitted up to five calamity days each year, which are regularly scheduled days that are cancelled due to hazardous weather or comparable circumstances. Districts that exceed five calamity days ordinarily must make up the excess days in accordance with a predetermined contingency plan. Districts that do not make up excess calamity days risk losing state funding for the next fiscal year because compliance with the state minimum school year is a condition for state funding.[17]

Recalculating school district valuations

(R.C. 3317.02(P) and (V), 3317.026, 3317.027, 3317.028, and 5751.20)

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 change may reduce the actual revenue received by a district without a corresponding reduction in the value on the tax duplicate. In all these cases,

[17] R.C. 3313.48 and 3313.482 (neither in the act); R.C. 3317.01(B).

continuing law provides for a recalculation of a district's state aid to account for reduced property valuation.

Base for recalculating state payments

The act changes the base from which these recalculations are made. Prior law measured the difference between a district's "SF-3 payment" before and after a required recalculation and credited the district with the difference. The act replaces the existing term "SF-3 payment" with a new term "state education aid." The new term "state education aid" lists most of the subsidies and adjustments accounted for on the Department of Education's 'SF-3" form to school districts, including temporary transitional aid and transportation payments, but excluding units for disabled preschool students, disabled student transportation payments, transfers among districts and educational service centers, and deductions for school choice programs such as open enrollment, community schools, and the Autism Scholarship Program. The new term, "state education aid," is also used under the act to calculate payments to a school district due to the phase-out of tangible personal property tax. (See "**DEPARTMENT OF TAXATION**" below.[18])

Reporting tax information

Under continuing law, if the Tax Commissioner determines that a district's valuation has been affected by tax refunds of at least 3% of the total taxes charged and payable, or by tangible personal property valuation changes to the extent of at least 5% of the district's total, or by any newly granted exemption, the Tax Commissioner must report that information to the Department of Education so that the Department may recalculate the district's state payments accordingly. The act requires the Tax Commissioner also to report that information to the Office of Budget and Management.

Timing of recalculated payments

Under prior law, the Department paid a district its recalculated amount on or before July 31 of the fiscal year following the year for which the recalculations were made.[19] The act specifies that the payment date must be determined by the

[18] Another defined term by the same name, "state education aid," is used to calculate replacement payments to school districts due to electric deregulation. That definition for that purpose is broader than the one created by the act for use in determining a district's valuation recalculations or its replacement payments due to the phase-out of the tangible personal property tax. See R.C. 5727.84.

[19] Prior to 2005, those recalculated amounts had to be paid on or before June 30 of the year the adjustments were made.

Director of Budget and Management, and that the Director must select a date that is not earlier than June 1 of the current fiscal year and not later than July 31 of the following fiscal year. It further states that the Department of Education must not pay the district prior to approval by the Director of Budget and Management to do so.

School district tax certification

(R.C. 3317.015, 3317.021, 3317.025, and 3317.08)

In order for the Department of Education to calculate a school district's state and local funding, including its charge-off amount and its tuition rate for nonresident students, the Tax Commissioner is required to certify by June 1 each year the tax valuation of various categories and classes of property in the district, revenue from the district's income tax (if it has one), and the converted valuation equivalent of payments the district may receive under tax exemption agreements. For those same purposes, by April 1 each year, the Director of Development is required to report to both the Department of Education and Tax Commissioner the amount of payments a district receives under tax exemption agreements. The act requires that the Tax Commissioner and Director of Development include the Office of Budget and Management as a recipient of these school district tax data when they make their respective certifications and report.

Report of school district expenditures

(R.C. 3301.0724)

The act requires the Department of Education to report annually to the General Assembly information on each school district's aggregate employee and benefits expenditures. In preparing the report, the Department must consult with the State Employment Relations Board. The report must include all of the following information from the previous year:

(1) The aggregate amount spent for teacher salaries;

(2) The aggregate amount spent for salaries of nonteaching employees;

(3) The aggregate amount spent for health care benefits for all employees and the percentage that amount is of the total amount paid in employer's contributions and employees' contributions for those benefits;

(4) The aggregate amount spent for the employer's contributions to the State Teachers Retirement System and the School Employees Retirement System;

(5) Whether the school district pays any part of the employees' contributions to the retirement systems; and

(6) The number of sick, vacation, and personal days provided for teachers and nonteaching employees.

If the Department determines it necessary, each school district must report the data listed above in the manner and by the deadline specified by the Department so that the Department can compile and submit its report to the General Assembly.

Biodiesel School Bus Program

(R.C. 3327.17)

The act creates the Biodiesel School Bus Program. The Department of Development is responsible for administering the program, which provides grants to school districts that use biodiesel instead of 100% petroleum diesel for pupil transportation. The grants are to help offset the incremental costs incurred by school districts that choose to use biodiesel. "Biodiesel" is a type of diesel fuel that is derived from vegetable oils or animal fats.

II. Community Schools

Background

Community schools (often called "charter schools") are public schools that operate independently from any school district under a contract with a sponsoring entity. Community schools often serve a particular educational purpose or a limited number of grades. They 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. They 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).[20]

[20] 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 generally 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.[21]

The Department of Education may take over sponsorship of community schools, but only in specified exigent circumstances.

Community school moratorium

(R.C. 3314.016, 3314.017, and 3314.02(D); Section 269.60.15)

The act places a moratorium on new start-up community schools after June 30, 2007, with four exceptions, two of which are similar to the exceptions to the previous statewide caps on community schools that expired July 1, 2007 (see "***Prior law--caps and exceptions***" below). The moratorium does not apply to conversion community schools. Also, the act does not revise the continuing moratorium on new Internet- or computer-based community schools (e-schools), which is in effect until the General Assembly enacts standards governing the operation of e-schools.

Operator exceptions

The first two exceptions to the act's moratorium apply to community schools managed by an operator. An operator is (1) an individual or organization that manages the daily operations of a community school or (2) a nonprofit organization that provides programmatic oversight and support to a community

[21] R.C. 3314.015(B)(1) and 3314.02(C)(1)(a) through (f).

school and that retains the right to terminate its affiliation with the school for failure to meet the organization's quality standards.[22]

Exception one (R.C. 3314.016(A)). Under the first operator exception, a start-up community school may be established after June 30, 2007, if its governing authority enters into a contract with an operator that manages other schools in the United States that perform at a level higher than academic watch, as determined by the Department of Education.[23] However, the act limits the number of community schools that an operator may contract with under this exception to an amount equal to the number of the operator's schools nationwide that perform better than schools in academic watch. An operator, for example, that manages two schools in continuous improvement and one effective school could manage three start-up community schools established after June 30, 2007. If two of those new schools then perform better than academic watch, the operator could manage two additional start-up community schools established after that date.

Exception two (Section 269.60.15). This exception is limited to early college high schools, which are schools that provide students with a personalized learning plan based on an accelerated curriculum combining high school and college-level coursework. Specifically, under the act, an early college high school that was operated by a Big-Eight school district in partnership with a private university during the 2006-2007 school year may, beginning in the 2007-2008 school year, operate as a start-up community school, under the following conditions:

(1) The governing authority and sponsor of the community school enter into a contract and both parties adopt and sign the contract by July 9, 2007;[24]

(2) The school's governing authority contracts with the private university to be the school's operator; and

(3) The school provides the same educational program it offered while part of the Big-Eight school district.

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[22] R.C. 3314.014, not in the act.

[23] Generally, a school in academic watch does not make the federal standard of adequate yearly progress (AYP) and either meets 31%-49% of the performance indicators established by the State Board of Education or has a performance index score of 70-79 (R.C. 3302.03(B)).

[24] This date is an extension of the March 15 and May 15 deadlines usually required for adopting and signing, respectively, the sponsorship contract (R.C. 3314.02(D)).

Exceptions for non-operator-managed schools

The act creates two exceptions to the moratorium for certain high performing schools that are *not* managed by operators. These exceptions do not apply to community schools sponsored by the school districts in which they are located. Moreover, they do not authorize any new school established under the exceptions to be sponsored by such a district.

Exception one (R.C. 3314.016(B)). Under this exception, the governing authority of a start-up community school that is not sponsored by the school district in which it is located may enter into another contract with the same sponsor, or a different sponsor, to open in the 2007-2008 school year one additional school serving *the same grade levels and providing the same educational program*, if the following conditions are met:

(1) The governing authority and the sponsor entered into their contract and filed a copy with the Superintendent of Public Instruction prior to March 15, 2006;

(2) The governing authority's existing school is rated as excellent or effective in the Department of Education's annual rating of school buildings;

(3) The existing school made adequate yearly progress for the previous school year;[25]

(4) The existing school has been in operation for at least four school years; and

(5) The existing school is not managed by an operator.

Exception two (R.C. 3314.017). The second exception allows the governing authority of a start-up community school that is not sponsored by the school district in which it is located to establish one additional start-up school located in the same school district as the current school, even if that district does not qualify as a "challenged school district." The new school must open in the 2008-2009 school year and provide a general educational program to students in grades K to 6 to facilitate their transition to the governing authority's existing school. To take advantage of this exception, the following conditions must be met:

[25] The Department of Education is required under the federal No Child Left Behind Act and conforming state law to determine whether each district or school building, including each community school, has met a particular performance target (called "adequate yearly progress" or "AYP") based on achievement test scores among students in specified subgroups. (20 U.S.C. 6311(b)(2)(E) to (J) and R.C. 3302.03(A).)

(1) The governing authority enters into a sponsorship contract with the same entity that sponsors the existing school and files a copy of the contract with the Superintendent of Public Instruction prior to March 15, 2008;[26]

(2) The governing authority's existing school made adequate yearly progress for each of the school years beginning with the 2002-2003 school year and ending with the 2005-2006 school year and was rated excellent or effective and named a School of Promise[27] for three of those school years;

(3) The existing school has been in operation for at least five school years; and

(4) The existing school is not managed by an operator.

Prior law--caps and exceptions

There were previously two caps on the number of community schools that could be established statewide, both of which expired July 1, 2007. The first cap applied to start-up schools and conversion e-schools sponsored by the school districts in which they were located. The second cap applied to start-up schools sponsored by other entities. Each cap was equal to 30 more than the number of schools to which the cap applied that were open as of May 1, 2005.

Under former law, a new community school could open after the statewide cap to which it was otherwise subject had been reached if the school's governing authority entered into a contract with an operator. Each operator could manage one school in excess of the cap for each school it managed in Ohio or another state on the date the cap was reached, excluding conversion community schools that were not e-schools, that had a performance rating of continuous improvement or better or performed comparably to a school so rated.

Another exception permitted start-up community schools sponsored by entities other than the school districts in which the schools were located to open one additional community school in the 2006-2007 school year that served the

[26] The act explicitly authorizes the sponsor to sponsor the new school and to continue that sponsorship "as long as the entity sponsors the [existing] school." It is not clear whether this stipulation limits the sponsor's authority to sponsor the new school if the existing school closes or finds a different sponsor.

[27] The Superintendent of Public Instruction annually recognizes Schools of Promise, which are schools that have proven successful in raising the achievement of students from all demographic subgroups, despite serving large proportions of economically disadvantaged students.

same grades and provided the same educational program as the existing school. To qualify for the exception, the governing authority must have entered into a contract with an eligible sponsor and filed a copy of the contract with the Superintendent of Public Instruction before March 15, 2006. Additionally, the existing school must (1) have been rated excellent or effective, (2) have made adequate yearly progress for the previous school year, (3) have been in operation for four or more school years, and (4) not be managed by an operator.

Prohibition on operating school from a residential facility

(Section 269.60.10)

Until July 1, 2009, a community school that opened for operation after May 1, 2005, is prohibited from operating from a residential "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.

ESC sponsorship of community schools

(R.C. 3314.02(C)(1)(d) and (G)(3))

Prior law permitted an educational service center (ESC) to sponsor a community school in any challenged school district. The act restricts an ESC to sponsoring a community school in a challenged school district located in a county within the territory of the ESC or in a contiguous county. However, an ESC that, on the provision's effective date, sponsors a community school located outside of the ESC's territory or a contiguous county may continue to sponsor the school and renew its contract with the school. But the ESC cannot contract with any additional community school that is outside the geographic boundaries set by the act.

Approval of out-of-state sponsors

(R.C. 3314.015(B)(1))

Under former law, the Department of Education could approve an entity that sponsors or operates schools in another state to sponsor community schools in Ohio only if one or more of the entity's out-of-state schools performed as well as or better than Ohio schools in academic watch. The act requires instead that at

least one of the out-of-state schools perform comparably to or better than Ohio schools in *continuous improvement*.[28]

Sponsor assurances

(R.C. 3314.19)

The act requires the sponsor of each community school to provide annual assurances to the Department of Education regarding the school's compliance with certain laws and the preparedness of the school's staff and facilities for the upcoming school year. These assurances must be submitted no later than ten business days before the school's opening day. Specifically, the sponsor must assure that:

(1) A current copy of the contract between the sponsor and the school's governing authority has been filed with the Department's Office of Community Schools and that any future modifications to the contract will also be filed;

(2) The school has submitted to the sponsor a plan for providing special education to disabled students and demonstrates the capacity to provide those services in accordance with state and federal law;

(3) The school has a plan for administering the state achievement tests and diagnostic assessments;

(4) School personnel have the training, knowledge, and resources to properly use and submit education data to all Department databases;

(5) All required information about the school has been submitted to the Ohio Educational Directory System;[29]

(6) The school will enroll at least the statutory minimum of 25 students in the coming school year;

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[28] Generally, a school in academic watch does not make the federal standard of adequate yearly progress (AYP) and either meets 31%-49% of the performance indicators established by the State Board of Education or has a performance index score of 70-79. A school in continuous improvement either (1) makes AYP, meets less than 75% of the State Board's performance indicators, and has a performance index score of 0 to 89 or (2) does not make AYP and either meets 50%-74% of the performance indicators or has a performance index score of 80 to 89. (R.C. 3302.03(B).)

[29] The Ohio Educational Directory System is a Department database that contains contact information for school districts, public and nonpublic schools, and educational service centers.

(7) All classroom teachers are properly licensed by the State Board of Education;

(8) The school's fiscal officer holds a valid school district treasurer or business manager license or has completed the requisite number of hours of continuing education in school accounting;

(9) The school has conducted criminal records checks on all employees responsible for the care, custody, or control of a child and on all governing authority members. Prior law did not require community schools to conduct criminal records checks of governing authority members; therefore, this provision appears to be a new requirement.

(10) The school holds (a) proof of property ownership or a lease for its facilities, (b) a certificate of occupancy, (c) liability insurance that the sponsor considers sufficient to indemnify the school's facilities, staff, and governing authority against risk, (d) a satisfactory health and safety inspection, (e) a satisfactory fire inspection, and (f) a valid food permit, if applicable;

(11) The sponsor has conducted a pre-opening site visit to the school;

(12) The school has designated an opening date for the school year that, unless the school solely serves dropouts, is no later than September 30; and

(13) The school has met all other requirements of the sponsor.

Unauditable community schools

(Section 269.60.60)

Under the act, if the Auditor of State finds a community school to be unauditable, the Auditor of State must provide written notification of that fact to the school, the school's sponsor, and the Department of Education, and post the notification on the Auditor of State's web site. The school's sponsor is prohibited from entering into contracts with any additional community schools until the Auditor of State is able to complete a financial audit of the school. Also, within 45 days after the notification, the sponsor must send a written response to the Auditor of State describing (1) the process the sponsor will use to review and understand the circumstances that led to the school becoming unauditable, (2) a plan for providing the Auditor of State with the documentation needed to complete an audit and for ensuring that all financial documents are available in the future, and (3) the actions the sponsor will take to ensure that the plan is implemented.

If the community school fails to make reasonable efforts and continuing progress to bring its accounts and records into an auditable condition within 90

days after being found unauditable, the Auditor of State must notify the Department of Education, which must immediately cease all state payments to the school. As under continuing law, the Auditor of State also must request the Attorney General to take necessary legal action to compel the school to bring its financial records into order.[30] If the Auditor of State subsequently is able to complete a financial audit of the school, the Department must release the funds withheld from the school.

All of these provisions are enacted in uncodified law. The act states that uncodified provisions of the act have no effect after June 30, 2009, unless their context clearly indicates otherwise.[31] It is not certain, therefore, whether these provisions will expire on that date or could be construed to operate after that date.

Transportation of community school students

(R.C. 3314.091)

Background

Continuing law generally requires a city, exempted village, or local school district to transport all students in grades K to 8 residing in the district to and from their assigned school, or to and from the nonpublic or community school they attend, if that school is more than two miles from their home. A district also may transport high school students; but if a district transports high school students to its own schools it must transport nonpublic and community high school students on the same basis. However, a district is not required to transport a nonpublic or community school student regardless of grade level if the direct travel time from the district school to which the student would be assigned is more than 30 minutes. Moreover, a district may offer a payment in lieu of transportation to the parent of a particular student if the district determines that it is impractical to transport that student.[32] Continuing law also permits a community school and a school district to enter into a bilateral agreement under which the community school will transport the district's resident students and receive a payment specified in the agreement that is deducted from the district's state payments.

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[30] The Attorney General may act to prevent the unlawful expenditure of public funds, cancel illegal contracts, enforce liabilities arising from false certifications or failure to furnish financial reports, ensure compliance with requirements or opinions made in an audit report, or enforce the laws relating to public offices and the expenditure of public funds (R.C. 117.41 and 117.42, neither section in the act).

[31] Section 809.03.

[32] R.C. 3327.01.

The act

In addition to the bilateral agreement authorized under continuing law, the act permits a community school to unilaterally accept responsibility for transporting a school district's resident students to and from the school.

Acceptance of transportation obligation (R.C. 3314.091(B)). Under this new option, the governing authority of the community school must submit written notification to the school district board of education indicating its acceptance of the transportation responsibility. For the 2007-2008 school year, this option is available only to a community school that (1) transported or arranged for transportation of its students in the previous school year (even if by having parents transport their children) without entering into a bilateral agreement and (2) notifies the district of its acceptance of the transportation responsibility for the 2007-2008 school year by July 15, 2007. Beginning with the 2008-2009 school year, any community school may take advantage of the new option, as long as it notifies the district of its acceptance of the transportation responsibility by January 31 of the preceding school year.

In all cases, a community school's acceptance of the transportation responsibility must cover an entire school year. It remains in effect for subsequent school years unless the community school submits written notification to the school district board of education relinquishing the responsibility. However, the community school cannot relinquish responsibility before the end of a school year and must submit notice of its relinquishment by January 31 of the preceding school year to allow the district reasonable time to prepare transportation for its resident students enrolled in the school. If the community school relinquishes its transportation responsibility, it cannot resume it in a future school year without the consent of the district board of education.

Who must be transported (R.C. 3314.091(C) and (D)(1)(b)). A community school that accepts transportation responsibility, including a community school with a bilateral agreement, must provide free transportation to students of the same grade level and distance from school as would be transported by the school district, although the community school is not required to use the same method of transportation. In other words, the community school must transport all students who are eligible for transportation under continuing law *and* students who are not otherwise eligible but would be transported under the district's transportation policy. Under continuing law, the community school may provide transportation for other students for a fee.

Payment (R.C. 3314.091(D)). Unlike community schools with bilateral agreements, which receive payments from the Department of Education in accordance with the terms of the agreement, a community school that unilaterally

accepts transportation responsibility must be paid the per pupil amount that otherwise would be paid to the student's resident school district for transportation. In fiscal years in which the General Assembly bases transportation payments on an across-the-board percentage of the district's payment for the previous school year (as the act does for FY 2008 and FY 2009), the per pupil payment to the community school is determined by dividing the district's aggregate transportation payment for students other than students with disabilities by the number of students transported by the district and the community school. In fiscal years in which the General Assembly bases transportation payments on the statutory formula, the per pupil payment to the community school is the amount that would have been paid to the district under the statutory formula for the mode of transportation the district would have used, even if the community school uses a different mode of transportation.

As with bilateral agreements, payment may be made only for students for whom transportation is actually provided or arranged or for whom a payment in lieu of transportation is made by the community school. However, the act specifies that no community school may receive payments for a student for whom transportation is arranged if the student does not actually utilize the arranged form of transportation. All payments must be used solely for providing or arranging transportation for the community school's students. The payments are deducted from the school district's state aid payments.

Community school full-time equivalency

(R.C. 3314.08(L))

Continuing law requires each community school to provide at least 920 hours of learning opportunities per school year to each student. Former law specified, for purposes of calculating state funding to the school, that a community school student's full-time equivalency was the percentage of 920 hours actually offered to that student. In other words, it was the percentage of the state minimum coursework offering in which the student participated.

The act changes the full-time equivalency of a community school student. Under the act, the Department of Education must determine each community school student's full-time equivalency based on the percentage that the learning opportunities offered to the student, whether reported as number of hours or days of instruction, is of the total learning opportunities offered by the school to a student who attends for an entire school year. Unlike prior law, a student's full-time equivalency under the act is the percentage of the school's full school year in which the student participates, regardless of whether, and to what extent, that full school year consists of more than 920 hours of instruction. The base is the school's *total* offering of learning opportunities and not the statutory minimum.

Enrollment challenge by school district

(R.C. 3314.08(O) and 3314.26)

The Governor vetoed provisions that would have established in statute a procedure for resolving disputes between a school district and a community school over whether a particular student was enrolled in the community school and, consequently, whether funds should be deducted from the district's state aid account and paid to the school for that student. Under the vetoed provisions, if a school district challenged a community school's enrollment figures, the Department of Education had to require the district to submit evidence of its claims. In addition, the Department had to provide the governing authority of the community school with written notice stating the specific grounds for the challenge. The community school had to be permitted to submit documentation to confirm or correct its enrollment reports subject to the challenge. The Department had to set a reasonable deadline for submission of all evidence by the district and the community school.

In all challenges, the school district would have borne the burden of proof that the community school should not be paid for a particular student. If the Department found that the district submitted evidence by the deadline and met its burden of proof, the Department had to withhold payments to the community school for that student. If the community school later submitted documentation that the Department found confirmed or corrected the school's earlier reports regarding the student, the Department had to resume payments to the school for that student and, if appropriate, release the funds that were formerly withheld. The Department had to dismiss any challenge in which the district failed to submit evidence by the deadline or did not meet its burden of proof or in which the community school provided documentation confirming or correcting the disputed reports.

Finally, the vetoed provisions prohibited the Department from withholding any other payments from a community school without first providing the school's governing authority with written notice of the amount to be withheld, the reasons for the withholding, and offering an opportunity for a hearing on the matter. The appeal process would have been the same one used in the case of enrollment reviews of community schools initiated by the Department. Specifically, the community school could appeal the Department's decision to the State Board of Education within ten business days after receiving the withholding notice. The State Board had to hold an informal hearing within the next 30 days and issue its decision, which was final, within 15 days after the hearing.

Enrollment of community school students in career-technical programs in their resident districts

(R.C. 3314.087)

The act permits a community school student to enroll in a career-technical program operated by the student's resident city, exempted village, or local school district. When a student is simultaneously enrolled in a community school and a career-technical program under the act's provisions, the Department of Education must allocate state funding for that student between the community school and the resident district in proportion to the time the student attends each school. Under continuing law, community school students also may enroll in vocational education programs provided by the joint vocational school district that serves the student's resident school district, if the community school has an agreement with the joint vocational district permitting the enrollment.

Distribution of assets of closed community school

(R.C. 3314.074)

Under continuing law, when a community school permanently closes, its assets must be distributed first to the retirement funds of school employees, school employees, and private creditors who are owed compensation. Any remaining funds previously had to be paid to the General Revenue Fund. The act requires that any funds remaining after debt payments be paid to the Department of Education, rather than the General Revenue Fund, for redistribution to the resident school districts of the students enrolled in the community school at the time it closed. Payments to each district must be proportional to the district's share of the community school's total enrollment.

III. STEM Schools and STEM Programs of Excellence

The act provides for the establishment and operation of independent public Science, Technology, Engineering, and Mathematics (STEM) schools teaching any of grades 6 to 12. It also authorizes grants to support new or existing STEM "programs of excellence" for any of grades K to 8. The schools and grant awards will be selected by a subcommittee of Partnership for Continued Learning, which subcommittee is created by the act, based on statutory parameters and proposals submitted by eligible entities in response to a request for proposals issued by the subcommittee. The selected STEM schools will begin instruction in fiscal year 2009. Grants for start-up of the STEM schools and for operation of the STEM programs of excellence will be available in both fiscal years 2008 and 2009.

STEM Subcommittee of the Partnership for Continued Learning

(R.C. 3326.02)

The act establishes a STEM Subcommittee of the Partnership for Continued Learning.[33] The members of the Subcommittee are the Superintendent of Public Instruction, the Chancellor of the Board of Regents, the Director of Development, and four members of the public, two appointed by the Governor and one each appointed by the Speaker of the House and the Senate President, based on their expertise in business or STEM fields. The four public members of the Subcommittee may *not* be at-large members of the Partnership for Continued Learning. Rather, they are new appointees from the public and are not added to the membership of the Partnership itself. They serve at the pleasure of their appointing authorities and may not be compensated.[34]

Selection of STEM schools

(R.C. 3326.03)

The act requires the STEM Subcommittee to authorize the establishment of public STEM schools and to award grants to those schools through a request for proposals. Up to five schools may be approved to open for instruction in the 2008-2009 school year. The act specifically states that the five-school limit expressed for that school year does not affect the number of schools that may be approved to operate in subsequent school years.

The act limits eligibility to submit proposals to partnerships of public and private entities that consist of at least a school district (or a joint vocational school district), higher education entities, and business organizations.

Each proposal must include at least the following:

[33] The Partnership for Continued Learning is a state body charged with making recommendations to facilitate collaboration among providers of preschool through post-secondary education and to maintain a high-quality workforce. Members are the Governor, the Superintendent of Public Instruction, the Chancellor of the Board of Regents, the Director of Development, the chairpersons and ranking minority members of the House and Senate Education committees, and representatives of education and workforce interests appointed by the Governor. (R.C. 3301.41, not in the act.)

[34] Each appointing authority is required to make appointments not later than 45 days after the act becomes law.

(1) Assurances that the school will be under the oversight of a governing body and a description of the members of that governing body and how they will be selected;

(2) Assurances that the school will operate in compliance with the laws that apply to the school and with the terms of the proposal as accepted by the Subcommittee;

(3) Evidence that the school will offer "a rigorous, diverse, integrated, and project-based curriculum" for students in any of grades 6 to 12 "with the goal to prepare those students for college, the workforce, and citizenship." The curriculum also must emphasize the role of the STEM disciplines in promoting innovation and economic progress; incorporate scientific inquiry and technological design; include the arts and humanities; and emphasize personalized learning and teamwork skills.

(4) Evidence that the school will attract school leaders who support the curriculum principles described in (3) above;

(5) A description of how the school's curriculum will be developed in accordance with the act. The curriculum must be developed by a team consisting of at least the school's chief administrative officer; a representative of the higher education institution that is a coordinating partner in the school; and a member of the public with expertise in the application of science, technology, engineering, or mathematics, and is subject to approval by the school's governing body.[35]

(6) Evidence that the school will utilize "an established capacity to capture and share knowledge for best practices and innovative professional development";

(7) Evidence that the school will operate in collaboration with a partnership that includes institutions of higher education and businesses;

(8) Assurances that the school has received commitments of sustained and verifiable fiscal and in-kind support from regional education and business entities; and

(9) A description of how the school's assets will be distributed if the school closes for any reason.

[35] R.C. 3326.09.

STEM programs of excellence

(R.C. 3326.04)

In addition to selecting STEM schools to be established, the act requires the STEM Subcommittee to award grants to support the operation of STEM programs of excellence to serve students in any of grades K to 8. Grant proposals may be submitted only by the board of education of a city, exempted village, or local school district or the governing authority of a community school.

Each proposal must demonstrate to the satisfaction of the Subcommittee that the program meets at least the following standards:

(1) Serves all students enrolled in the district or school in the grades for which the program is designed;

(2) Offers a rigorous and diverse curriculum that is based on scientific inquiry and technological design, that emphasizes personalized learning and teamwork skills, and that will expose students to advanced scientific concepts within and outside the classroom;

(3) Does not limit participation of students on the basis of intellectual ability, measures of achievement, or aptitude;

(4) Utilizes "an established capacity to capture and share knowledge for best practices and innovative professional development";

(5) Operates in collaboration with a partnership that includes institutions of higher education and businesses; and

(6) Includes teacher professional development strategies that are augmented by community and business partners.

The Subcommittee must give priority to proposals for new or expanding innovative programs.

Coordination with a STEM-focused nonprofit enterprise

(R.C. 3326.06)

The act requires the Partnership for Continued Learning, through the STEM Subcommittee, to work with an Ohio-based nonprofit enterprise, which is selected by the Subcommittee, "to support the strategic and operational coordination of public and private STEM education initiatives and resources." This required coordination must focus on curriculum development, instruction, assessment,

teacher quality enhancement, leadership recruitment and training, and community engagement. The selected enterprise must have "the proven ability to accumulate resources to enhance education quality across the educational continuum from preschool to college . . . , have experience in large-scale management of science and technology resources, and . . . have a documented institutional mission to advance STEM education."

Governance and administration of each STEM school

(R.C. 3326.07 and 3326.08(A))

Each STEM school is a public school, and must be under the oversight of a governing body that is described in the proposal for establishment of the school. That governing body is responsible for hiring and setting the compensation of the school's administrative officers, teachers, and nonteaching employees. The governing body is specifically required to employ a "chief administrative officer," who is to serve as the school's instructional and administrative leader. The chief administrative officer must be granted the authority to oversee the recruitment, retention, and employment of teachers and nonteaching employees.

Oversight by the Department of Education

(R.C. 3326.07 and 3326.08(B))

The act requires the Department of Education to monitor the oversight of each STEM school exercised by the school's governing body. The Department also must monitor the school's compliance with the law and with the proposal for its establishment as it was approved by the STEM Subcommittee. If the Department finds that a STEM school is not in compliance with the law or with its proposal for establishment, the Department must consult with the STEM Subcommittee. Upon this consultation, the STEM Subcommittee may order the school to close on the last day of the school year.

A STEM school may continue in operation for as long as it complies with the law and its proposal.

Admission to a STEM school

(R.C. 3326.10)

Each STEM school must adopt admission procedures that specify the following:

(1) Admission is open to all individuals who are entitled to attend school in any school district in the state;

(2) Admission of students who are not Ohio residents is not permitted;

(3) The school will not discriminate in the admission of students on the basis of race, creed, color, disability, or sex;

(4) The school will comply with all federal and state special education laws (see "***Compliance with specified education and general laws***" below); and

(5) The school will not limit admission to students on the basis of intellectual ability, measures of achievement or aptitude, or athletic or artistic ability; will assert its best effort to attract a diverse student body that reflects the community; and will recruit students from disadvantaged and underrepresented groups.

STEM school educators

(R.C. 3326.13)

Teachers in a STEM school must hold educator licenses or permits issued by the State Board of Education. The act also specifies that STEM school teachers must be "highly qualified," as defined in state law for purposes of the federal No Child Left Behind Act, which generally requires that teachers who teach "core academic subjects" in a program supported by federal Title I funds be "highly qualified." Core academic subjects include English, reading or language arts, math, science, foreign languages, civics and government, economics, arts, history, and geography. Generally, to be "highly qualified," a teacher must hold a bachelor's degree, must have passed a written subject matter test, and must be licensed by the State Board. Some teachers may substitute for the required test certain professional benchmarks described in a rubric developed by the Ohio Department of Education.[36]

While the act requires a STEM school teacher to be "highly qualified," it also permits a STEM school to employ a person to teach up to 40 hours each week without a regular educator license but instead with a "permit" issued by the State Board (see "***40-hour teaching permit***" below). An individual teaching under the 40-hour permit (as authorized by the act) or the 12-hour permit (as under continuing law) might not satisfy the requirement to be "highly qualified."

[36] R.C. 3319.074, not in the act.

STEM educator license

(R.C. 3319.28, 3319.29, 3319.291, and 3319.31)

The act requires the State Board to issue a two-year provisional educator license for teaching science, technology, engineering, or math in grades 6 to 12 in a STEM school to applicants who (1) have a bachelor's degree in a field related to the teaching area and (2) have passed a content assessment in the teaching area. It also requires the State Board, upon expiration of the STEM provisional license, to issue a five-year professional educator license in the same teaching area, if the applicant successfully completes an apprenticeship program and is recommended by the chief administrative officer of the STEM school and the administrator of the apprenticeship program. Finally, it requires the Department of Education to evaluate STEM schools' experiences with teachers teaching under the provisional license.

40-hour teaching permit

(R.C. 3319.301)

Continuing law requires the State Board to issue a teaching permit to certain individuals who do not hold an educator license but are otherwise qualified to teach for up to 12 hours each week. Under the State Board's licensure rules, applicants for the permit must have at least a bachelor's degree or five years of recent work experience in the subject area to be taught. School districts and community schools may employ a permit holder on a volunteer basis or under contract, provided the employment does not displace an employee with an educator license. Also, a permit holder must be supervised by another employee with an educator license until the permit holder has sufficient understanding of effective teaching methods to teach without supervision.

The act authorizes STEM schools to employ permit holders under the same conditions as school districts and community schools, except that an individual teaching in a STEM school under a permit may teach up to 40 hours per week instead of 12.

As noted above, a 12-hour or 40-hour permit holder might not be "highly qualified" for purposes of teaching in core subject areas as required under state or federal law.

Also, under continuing law and the act, these permit holders do not have collective bargaining rights, are not subject to the state minimum salary schedule for teachers, and are not eligible to participate in the State Teachers Retirement System or the School Employees Retirement System. These provisions appear to

be exceptions to the provisions of the act that otherwise permit employees of STEM schools to collectively bargain and require them to participate in the retirement systems.

Recommendations regarding training of STEM educators

(R.C. 3326.05)

The act authorizes the Partnership for Continued Learning, through the STEM Subcommittee, to make recommendations to the General Assembly and the Governor for the training of STEM educators.

Nonapplication of the state Civil Service Law

(R.C. 3326.19)

With respect to nonteaching employees, the act specifically exempts STEM schools from the requirements of the Civil Service Law (R.C. Chapter 124.). That law provides an extensive set of uniform procedures for testing, hiring, firing, layoff, employee discipline, sick leave, compensatory time, and other conditions of employment for classified and unclassified employees of affected agencies. It applies to nonteaching employees of city (but not local and exempted village) school districts.

Collective bargaining rights

(R.C. 3326.18 and 4117.06)

Teachers and nonteaching employees in STEM schools retain the right to collectively bargain. For this purpose, the State Employment Relations Board must recognize a bargaining unit that contains both teaching and nonteaching employees.

Employees in a conversion STEM school, however, remain part of any collective bargaining unit they were in prior to the conversion and are subject to any collective bargaining agreement for that unit in effect when the STEM school begins operating. New employees hired after the school's conversion also become part of the existing bargaining units. Conversion STEM school employees in a particular bargaining unit must continue to negotiate with the school district that was the employer prior to conversion, unless a majority of those employees petition the State Employment Relations Board to have the STEM school considered their public employer.

Participation in state retirement systems

(R.C. 3307.01, 3307.31, 3309.01, 3309.51, and 3326.11)

The act requires STEM schools and their employees to participate in the State Teachers Retirement System and the School Employees Retirement System.

Compliance with education and other general laws

(R.C. 3326.08(C), 3326.11, 3326.12, 3326.14 to 3326.16, and 3326.22)

Each STEM school must comply with the following laws in the same manner as if it were a school district:

- General laws regarding insurance and other benefit plans for employees (R.C. 9.90 and 9.91);
- Requirement to purchase liability insurance (R.C. 3313.201);
- Participation in the missing children clearinghouse, which is an information database about missing children maintained by the Attorney General, and other provisions regarding programs to locate missing children (R.C. 109.65 and 3313.96);
- Requirement that certain juvenile adjudication records be expunged (R.C. 2151.357);
- Reporting of and programs to prevent child abuse or neglect (R.C. 2151.421 and 3319.073);
- Open Meetings Law (Sunshine Law) (R.C. 121.22);
- Public Audit Law (R.C. Chapter 117.);
- Public Records Law (R.C. 149.43);
- Public Officers and Employees Ethics Law (R.C. 2921.42, 2921.43, and 3319.21 and Chapter 102.);
- Conduct and recording of board meetings (R.C. 3313.14, 3313.15, 3313.16, 3313.18, and 3313.26);
- Requirement for five-year projections of revenues and expenditures (R.C. 5705.391);

- Student and parent privacy laws (R.C. 3319.321 and Chapter 1347.);

- Laws regarding information required at student registration, immunizations and immunization records, screening of students for certain health impairments, and tuberculin testing (R.C. 3313.50, 3313.67 to 3313.673, 3313.69, and 3313.71);

- 182-day minimum school year (R.C. 3313.48, 3313.481, and 3313.482);

- Compulsory school attendance and truancy enforcement (R.C. 3321.01, 3321.13, 3321.14, and 3321.17 to 3321.191);

- Requirement for parent involvement policies (R.C. 3313.472);

- Achievement tests, diagnostic assessments, and intervention (R.C. 3301.0710, 3301.0711, 3301.0712, 3301.0715, 3313.608, and 3313.6012). The act also states that any student enrolled in the ninth grade or lower in a STEM school may take one or more of the five Ohio Graduation Tests ("OGT" or 10th grade achievement tests) at any of the times those tests are administered.[37]

- Reporting requirements for the Education Management Information System (EMIS), which is a database of fiscal, personnel, enrollment, and academic performance information about school districts and schools (R.C. 3301.0714), and other reporting requirements (R.C. 3319.32, 3319.35, and 3319.45);

- High school curriculum requirements, including the Ohio Core Curriculum required for students who enter the ninth grade after July 1, 2010, and the requirement to notify parents about the Ohio Core provisions. (R.C. 3313.603 and 3313.6014.) The act specifies that a STEM school may permit students to earn high school credit based on a demonstration of competency instead of, or in combination with, completing hours of instruction.[38]

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[37] Besides completing the high school curriculum, a student generally must pass all five areas of the OGT (reading, writing, math, science, and social studies) to graduate from high school. The OGT is given in March of each year to tenth graders and in December and one other time each year to eleventh and twelfth graders who have not passed an area of the OGT.

[38] Ordinarily, a student must complete at least 20 specified units of classroom study to graduate from high school. The act specifically permits a STEM school immediately to substitute competency demonstration for hours of instruction. However, there is no

- Diploma requirements (R.C. 3313.61, 3313.611, 3313.614, and 3313.615);

- Disciplinary procedures for suspending, expelling, or permanently excluding students and the requirements for anti-bullying policies (R.C. 3313.66 to 3313.662, 3313.666, and 3313.667);

- Criminal records checks of applicants for positions involving the care, custody, or control of a child (R.C. 3313.39) and reporting of misconduct by licensed employees (R.C. 3319.313 to 3319.315);

- Requirement for school safety plans (R.C. 3313.536);

- Requirements for schools to permit students to self-administer asthma medications and epinephrine (R.C. 3313.716 and 3313.718);

- Participation in the Post-Secondary Enrollment Options Program and other dual enrollment programs (R.C. 3313.6013 and Chapter 3365.);

- Qualifications of school bus drivers (R.C. 3327.10);

- Requirements to take actions to prevent lead poisoning and to control lead hazard in schools (R.C. Chapter 3742.);

- Sovereign Immunity Law for public employees (R.C. Chapter 2744.);

- Ohio Equal Pay Law (R.C. 4111.17);

- Ohio Civil Rights Act (R.C. Chapter 4112.);

- Ohio Whistleblower Law (R.C. 4113.52);

- Workers' Compensation Law (R.C. Chapter 4123.);

- Unemployment Compensation Law (R.C. Chapter 4141.);

- State Occupational Safety and Health Law (R.C. Chapter 4167.);

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prohibition on doing so under continuing law. Still, many schools grant credit only for completed units of study in classroom setting. Continuing law does require the State Board of Education, by March 31, 2009, to develop a plan for granting competency-based high school credit statewide (R.C. 3313.603(J)). The act requires a STEM school to comply with the State Board's plan after it is adopted.

- Employment protection for employees on jury duty (R.C. 2313.18);

- Requirement that students and teachers wear industrial eye protection in certain industrial courses or activities (R.C. 3313.643);

- Prohibition on offering monetary payment or other in-kind gift to a student or a student's parent as an incentive for that student to enroll in a school (R.C. 3313.648);

- Requirement to display the national flag (R.C. 3313.80); and

- Requirement to accept and display donated copies of the national and state mottoes (R.C. 3313.801).

Special education

The act also requires each STEM school to comply with the state and federal law regarding the provision of special education and related services to children with disabilities[39] as if it were a school district. It further provides that the resident school district of each child with a disability enrolled in a STEM school is not obligated to provide that student with a "free appropriate public education," as otherwise required for as long as the student attends the STEM school. In other words, the STEM school will take over the responsibility to provide the student with special education and related services.

Health and safety provisions

The act specifically requires each STEM school to comply with all health and safety laws applicable to school buildings.

Annual written assurances

(R.C. 3326.23)

The act requires the governing body of each STEM school to provide the Department of Education, at least ten business days before the school opens each year, written assurances of compliance with the law. The assurances include all of the following:

(1) That the school has a plan and demonstrated capacity for providing special education and related services to children with disabilities enrolled in the school;

[39] R.C. Chapter 3323.; 20 U.S.C. 1400 *et seq*.

(2) That the school has a plan and procedures for administering the state achievement tests and diagnostic assessments;

(3) That school personnel have the necessary training, knowledge, and resources to properly use and submit information to all databases maintained by the Department;

(4) That all required information about the school has been submitted to the Ohio Education Directory System (which is a database of directory information for schools and individuals);

(5) That all classroom teachers are licensed as required by law (see "***STEM school educators***" above);

(6) That the school's treasurer has been appointed and is operating in compliance with the law (see "***STEM school treasurer***" below);

(7) That the school has obtained criminal records checks for (a) all employees who are responsible for the care, custody, or control of children and (b) all members of its governing body;

(8) That the school has proof of property ownership or a lease for its facilities, a certificate of occupancy, liability insurance, a satisfactory health and safety inspection, a satisfactory fire inspection, and a valid food permit if needed;

(9) That the governing body has conducted a pre-opening site visit to the school;

(10) That the school has designated a date it will open for the school year; and

(11) That the school has met all of the governing body's requirements for opening and any other requirements of the governing body.

Annual report cards and academic accountability

(R.C. 3326.17)

Report cards

The act requires the Department of Education to issue annual report cards for each STEM school in the same manner as it does for other public schools. For each student enrolled in a STEM school, the Department must combine that student's performance data with comparable data from the school district in which the student is entitled to attend school for the purpose of calculating the district's

performance on the report card. That is, in addition to issuing separate report cards for each STEM school, the Department must include data pertaining to STEM school students on the report cards of the students' resident school districts.

Accountability

The federal No Child Left Behind Act requires each state to have in place a system of accountability for public schools that imposes specific graduated sanctions for school districts and school buildings that fail to meet "adequate yearly progress" (AYP) for two or more consecutive years. Accordingly, Ohio law requires such school districts and buildings to implement a series of graduated measures designed to improve performance.[40]

The act requires each STEM school to comply with the state accountability system that applies to sanctions for school "buildings" that fail to make AYP for two or more consecutive years "to the extent possible," but the school is not required to comply with those provisions that prescribe district-wide sanctions.

STEM school treasurer

(R.C. 3326.21)

The act requires each STEM school governing body to appoint a treasurer for the school. Both the governing body and the treasurer must comply with continuing laws regarding a school district treasurer's appointment, licensure, training, duties, and record keeping. Specifically, the act states that the governing body and treasurer must comply with R.C. 3301.072, 3301.074, 3313.22 to 3313.32, 3313.51, and 3315.08 in the same manner as the board of education and treasurer of a school district.

As such, the treasurer is the school's chief fiscal officer, is charged with the handling of and accounting for the school's funds, and is under the direction of and reports to the governing body regarding the school's fiscal operations. The treasurer must be licensed by the State Board of Education or be an "otherwise qualified treasurer," which, under law not changed by the act, means an individual who demonstrates that the individual meets all qualifications for a treasurer's license and has applied for the license but has not yet received the State Board's decision.

The governing body may appoint the treasurer at any regular or special meeting on or before May 1 for a term of up to five years beginning on August 1. If the governing body intends not to renew the contract of its treasurer, it must

[40] R.C. 3302.04, not in the act.

give the treasurer written notice by March 1 of the year the contract expires. If the governing body fails to provide that notice, the treasurer is considered re-employed for a succeeding one-year term. Also, at any regular or special meeting during the 14-month period between January 1 of the year before the contract expires and March 1 of the year it expires, the governing body may re-employ the treasurer for up to five years beyond the current contract.

Financial records of each STEM school must be maintained in the same manner as are financial records of school districts, pursuant to rules of the Auditor of State.

Audits of STEM schools

(R.C. 117.11, 117.113, and 3326.11)

The act requires the Auditor of State to audit each STEM school at least once each year (rather than once every two years for most other public entities).

Financing STEM schools

(R.C. 3317.03, 3326.31 to 3326.38, 3326.49, and 3326.50)

Under the act, each STEM school receives state operating funding by crediting the resident school districts of the students enrolled in the school and then deducting subsidies on a per-pupil basis from the districts. For each student, a STEM school is paid the sum of (1) the base-cost amount and base funding supplements, (2) special education additional weighted funding (if any), (3) vocational education additional weighted funding (if any), (4) some components of poverty-based assistance attributable to the student (academic intervention, limited-English proficient services, professional development, dropout prevention, and community outreach), and (5) state parity aid attributable to the student.

Also, if a STEM school's cost for serving a child with a disability exceeds the statutory "catastrophic" amount, it may apply for partial reimbursement of the excess amount. Elsewhere, the act sets the threshold catastrophic amount for fiscal years 2008 and 2009 at $27,375, for students with category two through five disabilities, and $32,850, for students with a category six disability (see "***State funding for school districts***" above).[41] This catastrophic cost payment is not deducted from the student's resident district.

In addition, each STEM school may apply for state gifted education unit funding, federal or state grants, and private grants.

[41] R.C. 3317.022(C)(3).

Enrollment reporting

Each STEM school must report enrollment in the form and manner required by the Department. As stipulated in continuing law for school districts and community schools, a STEM school may not receive payment for any student who either (a) has already graduated high school, (b) is not an Ohio resident, (c) was enrolled in a STEM school the previous year but did not take one or more required state achievement tests and was not excused by the Superintendent of Public Instruction, or (d) is age 22 or older, unless the student is a recent veteran of the armed services whose education was interrupted by military duty. Also, the Department must adjust payments for any student enrolled for less than a full school year.

The resident school districts of the students enrolled in a STEM school are required to count those students in their average daily membership counts reported to the Department. In this way, the resident district is credited with state funding attributable to the student prior to the deduction from the district's account for payment to the STEM school.

No taxing or bonding authority

(R.C. 3326.49)

The act states that a STEM school may not levy taxes or issue bonds secured by tax revenues.

No tuition

(R.C. 3326.50)

The act prohibits a STEM school from charging tuition for any student enrolled in the school.

Transportation of STEM school students by school districts

(R.C. 3326.20)

The act specifies that, if a STEM school's proposal does not provide for the transportation of students to and from the school, each school district must provide transportation for its resident students who enroll in the STEM school, in the same manner as required by law for students enrolled in nonpublic schools.[42]

[42] For background on school districts' transportation responsibilities, see "***Transportation of community school students***" above.

Participation of STEM school students in district extracurricular activities

(R.C. 3313.537)

The act requires a school district to afford any of its resident students enrolled in a STEM school the opportunity to participate in extracurricular activities offered by the traditional public school to which the student otherwise would be assigned. As defined in continuing law, an "extracurricular activity" is a student activity program that a school or school district operates that is not included in the graded course of study. It also includes an interscholastic extracurricular activity that a school or district sponsors or participates in and that has participants from more than one school or district.

To take advantage of this provision, the student must fulfill the same academic, nonacademic, and financial requirements as any other participant in the extracurricular activity.[43] A school or district may not impose fees for a STEM school student to participate in extracurricular activities that exceed any fees charged to other students for the same activities. No school district, interscholastic conference, or organization that regulates interscholastic conferences or events may impose eligibility requirements that conflict with the act's provisions.

IV. Other Education Provisions

Existing scholarship programs

The act retains the laws implementing the Educational Choice Scholarship Pilot Program. The As Introduced version had proposed to repeal the laws.[44] The act also retains the Cleveland Scholarship Program and the Autism Scholarship Program.

[43] Under continuing law, school district boards must adopt rules requiring students in grades 7 to 12 to attain a minimum grade point average (established by the board) as a condition of participation in interscholastic extracurricular activities. District boards also must adopt policies either prohibiting students from participating in interscholastic extracurricular activities, or allowing students to participate, if the students receive failing grades in any class in the graded course of study during the previous grading period. Finally, district boards may adopt rules that include additional standards for determining the eligibility of students to participate in interscholastic extracurricular activities and exemptions for students with disabilities. (R.C. 3313.535, not in the act.)

[44] R.C. 3310.01, 3310.02, 3310.03, 3310.04, 3310.05, 3310.06, 3310.07, 3310.08, 3310.09, 3310.10, 3310.11, 3310.12, 3310.13, 3310.14, and 3310.17, none in the act.

Background

The Educational Choice Scholarship Pilot Program provides up to 14,000 scholarships each year to students in lower performing public schools to pay tuition at chartered nonpublic schools. The program began operation in the 2006-2007 school year. The maximum amount of each scholarship that year was $4,250 for grades K through 8, and $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 formula amount from the previous fiscal year. To finance the scholarships, the Department of Education deducts from the state funding account of each scholarship student's resident school district $5,200 for a student in grades 1 through 12, and $2,700 for a kindergarten student. These amounts, by statute, are to be used to fund scholarships under both the Educational Choice and the Cleveland scholarship programs.

The Pilot Project Scholarship Program (the Cleveland Scholarship Program) provides scholarships to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the Superintendent of Public Instruction. Currently, only the Cleveland Municipal School District meets this criterion. The program has been authorized since 1995.

The Autism Scholarship Program pays scholarships, of up to $20,000 per qualified child, to the parents of autistic children, which may be used for services at public or nonpublic special education programs that are not operated by or for the child's resident school district. It has operated since 2004.

Special Education Scholarship Pilot Program

(R.C. 3310.51 to 3310.63 and 3323.052; conforming changes in R.C. 109.57, 109.572, 3317.022, 3317.029, 3317.0217, 3317.03, and 5727.84)

The Governor vetoed provisions that would have established the Special Education Scholarship Pilot Program, to operate in fiscal years 2009 through 2014. The program would have provided scholarships on behalf of disabled children in grades K through 12 to attend public or private special education programs other than those offered by their school districts. The number of scholarships could not exceed 3% of the number of disabled students identified statewide. Each scholarship would have been worth the smallest amount of (1) $20,000, (2) the total fees charged by the provider, or (3) the amount that otherwise would be calculated for state and local funding for the school district's provision of special education and related services for the child. While a child used a scholarship, the school district in which the child otherwise would be

enrolled would have no obligation to provide the child with a free appropriate public education. But the district would have retained a continuing obligation to develop the child's federally mandated individualized education program (IEP).

A detailed description of the vetoed provisions is available on pages 102 through 110 of LSC's analysis of the Senate version of H.B. 119. The analysis is available online at www.lsc.state.oh.us/analyses127/h0119-ps-127.pdf.

The veto does not affect the Autism Scholarship Program.

TANF-funded Early Learning Initiative

(Section 309.40.60)

The act establishes the Early Learning Initiative (ELI) paid for with federal Title IV-A (TANF) funds, to provide early learning services through an early learning program, on a full-day, part-day, or both a full-day and part-day basis, to eligible children. An 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 Title IV-A services,[45] and whose family income at the time of application does not exceed 185% of the federal poverty line in FY 2008 or 200% of the federal poverty line in FY 2009.[46] Each county department of job and family services must determine eligibility for Title IV-A services for children who wish to enroll in an early learning program within 15 days after the county department receives a completed application.

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[45] 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).)

[46] Participation in ELI does not prohibit or prevent an individual from obtaining a certificate of payment for publicly funded child-care.

The act also specifies that early learning services must relate to the purpose of preventing and reducing the incidence of out-of-wedlock pregnancies and establishing annual numerical goals for preventing and reducing the incidence of these pregnancies.[47]

The Ohio Department of Education (ODE) and the Ohio Department of Job and Family Services (ODJFS) must jointly administer ELI in accordance with the law governing the administration of Title IV-A programs. Both Departments have separate and joint duties to fulfill for ELI.

ODJFS duties

The act directs ODJFS to reimburse early learning agencies for Title IV-A services provided to eligible children under the terms of the ELI contract and in accordance with rules adopted by ODJFS and ODE (see "***Contracting with an early learning agency***" and "***Joint duties***").

ODE duties

The act directs ODE to (1) define the early learning services that will be provided to eligible children through ELI, (2) establish an application deadline for entities seeking to become early learning agencies, and (3) establish early learning program guidelines for school readiness to assess the operation of early learning programs.[48]

Joint duties

The act directs ODJFS and ODE to jointly:

(1) Develop an application form and criteria for the selection of early learning agencies, which must include a requirement that early learning agencies, or the early learning provider operating an early learning program on the agency's behalf, must be licensed or certified by ODJFS under the Child Care Laws or ODE under the Preschool and School Child Program Laws;

(2) Adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) regarding all of the following:

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[47] 45 C.F.R. 260.20(c).

[48] An early learning agency includes (1) an early learning provider or (2) an entity that enters into an agreement with an early learning provider to operate an early learning program on behalf of the entity.

(a) 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 185% of the federal poverty line in FY 2008 and 200% of the federal poverty line in FY 2009;[49]

(b) An exemption from co-payment requirements for families whose family income is equal to or less than 165% of the federal poverty line;

(c) A definition of "enrollment" for the purpose of compensating early learning agencies; and

(d) Compensation rates for early learning agencies based on the enrollment of eligible children.

(3) Contract for up to 12,000 enrollment slots for eligible children in each fiscal year.

Contracting with an early learning agency

Once an entity applies to ODE to become an early learning agency, ODE must select entities that meet the criteria established in consultation with ODJFS. When ODE selects an entity to be an early learning agency, ODJFS and ODE must enter into a contract with that entity, and ODE must designate the number of eligible children that the entity may enroll and notify ODJFS of the number. (The act also specifies that certain contracts will remain effective, regardless of the date of issuance of a state purchase order.)

Terms of the contract

The contract between ODJFS, ODE, and each early learning agency must outline the terms and conditions applicable to the provision of Title IV-A services for eligible children and include the following:

(1) The respective duties of the early learning agency, ODJFS, and ODE;

(2) Requirements regarding the allowable use of and accountability for Title IV-A compensation paid under the contract;

(3) Reporting requirements, including a requirement that the early learning provider inform ODE when the provider learns that a kindergarten eligible child will not be enrolled in kindergarten;

[49] The 2007 federal poverty guideline for a family of four is $20,650. 165% of that amount is $34,073 and 185% of that amount is $38,203.

(4) The compensation schedule payable under the contract;

(5) Audit requirements; and

(6) Provisions for suspending, modifying, or terminating the contract.

Also, if an early learning agency, or an early learning provider operating on an agency's behalf, substantially fails to meet ODE'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 ODE. If the agency does not implement a corrective action plan, ODE may direct ODJFS to withhold funding from the agency or request that ODJFS suspend or terminate the agency's contract.

Early learning program duties

The act requires each early learning program to do all of the following:

(1) Meet teacher qualification requirements applicable to early childhood education programs (see "***Staff qualifications for early childhood programs***" below);

(2) Align its curriculum to early learning content standards;

(3) Meet any state student assessment requirements that apply to the program;

(4) Require teachers, except teachers enrolled and working to obtain a degree, to attend at least 20 hours every two years of professional development as prescribed by ODE regarding the implementation of early learning program guidelines for school readiness;

(5) Document and report child progress;

(6) Meet and report compliance with the early learning program guidelines for school success; and

(7) Participate in early language and literacy classroom observation evaluation studies.

State-funded early childhood education programs

(Section 269.10.20)

The act continues for the 2008-2009 biennium a GRF-funded program, originally established in the previous biennium and administered by the

Department of Education, to support early childhood education programs serving preschool-age children from families earning up to 200% of the federal poverty guidelines.[50] Program providers may include school districts and educational service centers (ESCs). School districts, other than joint vocational districts, must be eligible for poverty-based assistance to receive funding for new early childhood education programs in the biennium, but school districts whose programs have been funded previously remain eligible for continued funding even if they do not receive poverty-based assistance. Families who earn more than the federal 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 "***Staff qualifications for early childhood education programs***" below);

(2) Align its curriculum to early learning content standards;

(3) Administer any diagnostic assessments adopted by the State Board of Education that are applicable to the program;[51]

(4) Require teachers, except for those working toward an associate or bachelor's degree in a related field, to attend at least 20 hours every two years of professional development as prescribed by the Department of Education regarding the implementation of early learning program guidelines for school readiness;

(5) Document and report child progress;

(6) Meet and report compliance with the early learning program guidelines for school readiness; and

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[50] See Section 206.09.06 of Am. Sub. H.B. 66 of the 126th General Assembly. A preschool-age child is one who is at least three years old but not yet eligible to start kindergarten. The 2007 federal poverty guideline for a family of four is $20,650. 200% of that amount is $41,300.

[51] Continuing law permits school districts to administer the kindergarten diagnostic assessment, known as the kindergarten readiness assessment, to a child up to four weeks prior to the child's first day of 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.

(7) Participate in early language and literacy classroom observation evaluation studies.

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. However, in each fiscal year, the act caps at $18,622,151 the amount that may be distributed to providers that received funds in fiscal year 2007, unless the number of new providers since then is insufficient to expend the available funding. In that case, the Department may direct funding to previous recipients for program expansion, improvement, or special projects to promote quality and innovation. Conversely, if there are insufficient funds to serve all new providers in a fiscal year, the Department must determine which providers to fund using a selection process that gives priority in the following order: (1) to providers that, as of March 15, 2007, did not offer early childhood education programs but had offered those programs or public preschool programs at some time after June 30, 2000, and (2) to providers that demonstrate a need for early childhood education programs, including having higher rates of low-income preschool children to be served.

Funding must be distributed on a per-pupil basis. Per-pupil funding for programs established on or after March 15, 2007, must be sufficient to provide services for half of the statewide average length of the school day for 182 days each school year.[52] The Department may adjust funding 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. The Department may use up to 2% of the total appropriation in each fiscal year for administrative expenses.

The Department may examine a program provider's records to ensure accountability for fiscal and academic performance. If the Department finds that (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

[52] The act explicitly states that program providers may use other funds to offer services for a longer part of the school day or school year.

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.

If a program provider has its funding withdrawn or 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 selection process.

The act requires the Department 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 web site.

School district preschool programs

(R.C. 3301.53 and 3313.646)

To establish a preschool program under prior law, a school district had to both (1) be eligible for poverty-based assistance and (2) demonstrate a need for the program that was not being met by an existing child care program. The act now allows any school district to establish a preschool program, eliminating the condition that the district qualify for poverty-based assistance.[53] It also removes the condition that the district have a need for the program that is not being met by another child care program and simply requires the district to show a need.

Staff qualifications for early childhood education programs

(R.C. 3301.311)

Under continuing law, teachers in preschool programs, early childhood education programs, and early learning programs must meet certain educational

[53] Under the act, only districts that receive poverty-based assistance are eligible in the 2008-2009 biennium for state funding for new early childhood education programs (see "***State-funded early childhood education programs***" above). Consequently, districts that start a preschool program during the 2008-2009 biennium, but do not receive poverty-based assistance, would have to support the program with other funds during that time.

criteria for the programs to be eligible for state funding. Since fiscal year 2006, these programs have qualified for state funding only if half of their teachers are working toward an associate degree approved by the Department of Education.

The act postpones future deadlines for programs to have (1) 100% of their teachers hold associate degrees and (2) 50% of their teachers hold bachelor's degrees. For programs started prior to fiscal year 2007, all teachers must have an approved associate degree by fiscal year 2010, instead of fiscal year 2008. For programs established during or after fiscal year 2007, all teachers must have an approved associate degree by fiscal year 2012 and half of those teachers must have an approved bachelor's degree by fiscal year 2013.

Date of program establishment	Year in prior law program must meet requirement	Year in act program must meet requirement
Before FY 2007		
50% of teachers working toward associate degree	FY 2006	FY 2006
100% of teachers with associate degree	FY 2008	FY 2010
50% of teachers with bachelor's degree	FY 2011	FY 2011
During or after FY 2007		
50% of teachers working toward associate degree	FY 2006	At establishment
100% of teachers with associate degree	FY 2008	FY 2012
50% of teachers with bachelor's degree	FY 2011	FY 2013

Academic distress commissions

(R.C. 3302.10)

Background

Continuing law provides that beginning July 1, 2007, the Superintendent of Public Instruction must establish an academic distress commission for each school district that has been in a state of academic emergency and has failed to make adequate yearly progress 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 of Public Instruction and two voting members appointed by the president of the district board of education.

The commission is directed to "assist the district for which it was established in improving the district's academic performance." In doing so, the commission may appoint, reassign, and terminate the contracts of district administrative personnel; contract with a private entity to perform school or district management functions; and establish a budget for the district and approve school district expenditures. (However, if a financial planning and supervision commission has been established under the school district fiscal emergency law, that commission, instead of the academic distress commission, is responsible for approving the district's budget and expenditures.)

The act makes several changes in the law regarding the operation of an academic distress commission.

Membership appointment and compensation

The act specifies that the two members appointed by the district board president must be residents of the district. It also adds that (1) the members of the commission serve at the pleasure of their appointing authority during the life of the commission, (2) a vacancy must be filled within 15 days, and (3) the members serve without compensation, but are to be paid by the commission for their necessary and actual expenses incurred doing the business of the commission.

Conflicts of interest

The act requires the members of an academic distress commission to file financial disclosure statements in the same manner as a state or local government official or a candidate for office. The statement generally is confidential, subject to review by the appropriate ethics commission.

New operating procedures

The act adds numerous new operating procedures as follows:

(1) When an academic distress commission is established, the Superintendent of Public Instruction must provide written notice to the district board and request the board's president to submit the names of the president's appointees. Both the Superintendent of Public Instruction and the board president are to make their appointments within 30 days after the Superintendent's notice to the board.

(2) The Superintendent of Public Instruction must call the first meeting of the commission immediately after the initial members are appointed. The first

meeting must include an overview of the commission's roles and responsibilities, and the requirements of the state Ethics Law and the Open Meetings Law. The commission also must adopt temporary bylaws at its first meeting until the adoption of permanent bylaws.[54]

(3) The Superintendent of Public Instruction must designate a chairperson from among the members appointed by the Superintendent. The chairperson is required to call and conduct meetings, set meeting agendas, and serve as a liaison between the commission and the district board. The chairperson also must appoint a secretary, who may not be a commission member.[55]

(4) The Department of Education must provide administrative support for each commission.

(5) Commission members are not personally liable or subject to any suit, judgment, or claim for damages resulting from the exercise of or failure to exercise their powers, duties, and functions.

(6) Commission meetings are subject to the state Open Meetings Law.

Academic recovery plan

Each commission, within 120 days after its first meeting, must adopt an academic recovery plan for the school district, which must be approved by the Superintendent of Public Instruction prior to its implementation. The plan must include all of the following:

(1) Short-term and long-term actions to be taken to improve the district's academic performance;

(2) The sequence and timing of those actions;

(3) Resources that will be applied toward improvement efforts;

(4) Procedures for monitoring and evaluating improvement efforts; and

(5) Reporting requirements.

The act requires the commission to update the plan at least annually. It also directs county, state, and school district officers and employees to "assist the

[54] The act specifies that the temporary and permanent bylaws are not subject to the state Administrative Procedure Act.

[55] Three members constitute a quorum.

commission diligently and promptly in the implementation of the academic recovery plan."

Penalties for reporting inaccurate EMIS data

(R.C. 3301.0714(J) and (L))

Background--prior law

The Education Management Information System (EMIS) is a statewide electronic database on students, school staff, districts, and buildings. The Department of Education uses EMIS data to calculate payments to and to monitor the performance of districts and schools.

Under prior law, if the Department determined that a school district or community school failed to meet an EMIS report or correction deadline or reported data that indicated the district or school did not make a good faith effort in reporting data, the Department had to send a report of the district's or school's actions. Upon making a report for the first time in a fiscal year, the law required that the Department withhold 10% of the state funds due to the district or school for that fiscal year. Upon making a second report in a fiscal year, the Department was required to withhold an additional 20%. The Department could not release the withheld funds unless it determined that the district or school had taken corrective action within 45 days after the Department made its report.

New sequential actions under the act

The act replaces the former penalties with a specified series of sequential actions that the Department may take if it determines that a district, community school, educational service center, or other educational entity reports incomplete or inaccurate data, reports data that does not conform to the Department's published data requirements and descriptions, fails to report data in a timely manner, or otherwise does not make a good faith effort to report data. When an action resolves a data-reporting problem to the Department's satisfaction, the Department may not proceed to take further actions. The State Board of Education must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the new penalty sequence.

First, the Department may require the reporting entity to review its data submission, submit corrected data, and submit a corrective action plan. Second, it may withhold up to 10% of the entity's state payments for the fiscal year and, if it has not already done so, require the entity to develop a corrective action plan. Third, it may withhold up to an additional 20% of the entity's state payments for the fiscal year. Fourth, the Department may direct its staff or an outside

organization to investigate the entity's data reporting practices and make recommendations for further penalties. Those recommendations may include, but are not limited to, such actions as auditing the entity's data reporting practices, conducting a site visit, assigning Department staff "to supervise the [entity's] data management system," conducting an investigation to determine whether to suspend or revoke employee licenses, and withholding up to an additional 30% of the entity's state payments. The recommendations also may include issuing a revised report card for the entity.[56]

If the Department takes an action against an entity, the Department must make a report of the circumstances that prompted the action and send a copy of the report to the district or service center superintendent (or chief administrative officer in the case of a community school or other educational entity) and maintain a copy of the report in its files.

If the Department withholds funds and later is satisfied that the entity has corrected the reporting problem, it may release some of those funds. If the Department withheld money only once (up to 10% of the entity's state funds), it may release that money. However, if the Department withheld money a second time (up to an additional 20%), it may release that money but not the up to 10% initially withheld. Likewise, if the Department withheld money a third time (up to an additional 30%), it may release that money but not the first and second amounts it withheld prior to that. The act also specifies that the withholding of funds may be appealed in accordance with the Administrative Procedure Act. However, it also states that, in all cases of a disagreement between the Department and an entity regarding the appropriateness of an action taken, the burden of proof is on the entity to demonstrate that it made a good faith effort to report data.

Finally, the act authorizes the Department to audit the data reporting practices of any school district, community school, or other educational entity any time the Department has reason to believe that the entity has not made a good faith effort to report required data. The Department may use its own staff or an outside auditor to conduct the audit. If the Department uses an outside auditor, and the audit confirms a lack of good faith effort, the entity being audited must reimburse the Department for the audit's cost. The Department may withhold state funds to recoup the reimbursement.

[56] Prior to issuing a revised report card, the Department may hold a hearing, conducted by a referee appointed by the Department, so the entity may seek to demonstrate a good faith effort to report data. If the hearing affirms the Department's contention, the entity bears the cost of the hearing and the cost of issuing the revised report card.

School district and building performance ratings

(R.C. 3302.03)

The act limits the highest academic performance rating a school district or building may receive based on the percentage of its students who do not take all required achievement tests. A district or building may be rated:

(1) No higher than "continuous improvement," if 10% to 15% of the students are not tested;

(2) No higher than "academic watch," if more than 15% but not more than 20% of the students are not tested; and

(3) No higher than "academic emergency," if more than 20% of the students are not tested.

However, the act exempts from these limitations community schools in which a majority of the students are enrolled in a dropout prevention or recovery program.

Background

Each city, exempted village, and local school district and each community school is required to administer the applicable state achievement tests to all students annually. Certain alternative assessments may be administered to some disabled students, and limited-English proficient students who have been enrolled in the U.S. for less than one full school year may be excused from taking the reading or writing tests. The state achievement tests are as follows: reading test for each of grades 3 through 8 and grade 10; writing test for grades 4, 7, and 10; mathematics test for each of grades 3 through 8 and grade 10; science test for grades 5, 8, and 10; and social studies test for grades 5, 8, and 10.[57]

Based largely on student test scores, the Department of Education annually rates the performance of each district and building (including most community schools). The five classes of performance are: "excellent," "effective," "in need of continuous improvement," "academic watch," and "academic emergency."

[57] R.C. 3301.0710, not in the act, and 3301.0711. Some of these tests are required under the federal No Child Left Behind Act.

Correction of graduation rate

(Section 269.60.90)

The act allows school districts to correct inaccurate graduation data reported to the Department of Education through the Education Management Information System (EMIS). Specifically, if a district mistakenly reported data that showed a 0% graduation rate for the 2005-2006 school year for the district or any district building, and the district notified the Department of the error by June 30, 2007, the Department must allow the district to correct the graduation rate. Also, the Department must include the corrected graduation rate on the August 2007 report card issued for the district and any building affected by the error.

OGT testing requirements for foreign exchange students

(R.C. 3313.615)

Under continuing law, to qualify for a diploma from a public or chartered nonpublic high school, students generally must (1) complete the high school curriculum and (2) pass the five Ohio Graduation Tests (OGT) in reading, writing, math, science, and social studies.[58] Foreign exchange students who meet the curriculum and testing requirements for graduation may receive a diploma from an Ohio high school. However, unlike other students, foreign exchange students are exempt from passing the social studies portion of the OGT if the student is neither a U.S. citizen nor a permanent resident of the United States and indicates no intention to reside in the United States after high school.[59] Under prior law, foreign exchange students also could satisfy the alternative testing conditions for a diploma, which are designed for students who pass all but one portion of the OGT (see below). But since foreign exchange students are exempt from passing the social studies test, they needed only to pass three of the remaining four tests to qualify for a diploma under the alternative conditions.

The act prohibits a foreign exchange student from qualifying for a high school diploma under the alternative testing conditions, unless the student passes the social studies test. In other words, if a foreign exchange student fails one of the other subject area tests, the student must pass the social studies test to qualify for a diploma under the alternative conditions.

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[58] See R.C. 3313.61, 3313.611, 3313.612, 3314.03(A)(11)(f), and 3325.08 (none in the act).

[59] R.C. 3313.61(H) and 3313.612(B)(2).

Background

The alternative testing conditions for a diploma apply only to students who pass all but one portion of the OGT and fail that one test by ten points or less. A student in this situation may still receive a diploma under the following conditions:

(1) The student has a 97% attendance rate in each of the last four school years and no expulsions during that time;

(2) The student has a grade point average of at least 2.5 out of 4.0 in the subject area of the failed test;

(3) The student completes the high school curriculum requirements;

(4) The student has taken advantage of school-sponsored intervention programs in the subject area of the failed test and has a 97% attendance rate in any of those programs that have been provided outside of the normal school day, week, or year, or the student has received comparable intervention services from another source; and

(5) The student's high school principal and each of the student's high school teachers in the subject area of the failed test recommend that the student graduate.

Shipping date of elementary achievement tests

(R.C. 3301.0711)

Under prior law, each school district board was required to submit the state elementary achievement tests to the scoring company not later than the Friday after the tests were administered.

The act changes the submission dates depending on the size of enrollment in the school district. Districts with a total enrollment of less than 2,500 must continue to submit their tests by the Friday after they are administered. Districts with enrollments of 2,500 or more, but less than 7,000, must submit their tests by the Monday after they are administered. Districts with enrollment sizes of 7,000 or more must submit their tests by the Tuesday after the tests are administered.

Redacted achievement test questions

(R.C. 3301.0711(N)(4)(b))

Continuing law stipulates that state achievement tests become public records after their administration, but the Department of Education is permitted to

redact from the public record field test questions (used to determine if they are appropriate for future tests) and anchor questions (used to compare different versions of the same test). These questions are not used to compute student scores. Of the elementary achievement tests, the law also specifies that up to 60% of the questions that are used to compute student scores may be redacted to protect them for future re-use.

For each redacted question from an elementary achievement test *that is not a field test question*, the act requires the Department to provide each school district with the state academic content standard and corresponding benchmark that relates to that question.

Physical education standards

(R.C. 3301.0718; Section 269.60.80)

The act eliminates the requirement that state physical education standards and model curricula developed by the State Board of Education are subject to approval by concurrent resolution of the General Assembly. Instead, it requires the State Board, by December 31, 2007, to adopt the most recent standards for physical education in grades K to 12 developed by the National Association for Sport and Physical Education or adopt its own physical education standards in those grades. Any school district or community school may utilize the standards, but none is required to use them.

The act also requires the Department to employ a full-time physical education coordinator by October 31, 2007, to provide guidance and assistance to school districts in implementing the standards. The Superintendent of Public Instruction must determine that the person employed as the coordinator possesses the adequate combination of education, license, and experience to be considered qualified for the position.

Finally, the act requires each school district, community school, and chartered nonpublic school to report to the Department the number of minutes per week and the number of classes per week of physical education provided to students in each of grades K to 8 in the 2006-2007 school year and scheduled to be provided to those students in the 2007-2008 school year. The reports are due October 31, 2007.

Chartered nonpublic school closing notice

(R.C. 3301.162 and 3317.06(N))

The act requires the governing authority of a chartered nonpublic school to notify the Department of Education, the school district that receives state auxiliary

services funding on behalf of the school's students, and the accrediting association that most recently accredited the school, if the governing authority intends to close the school. The notice must include the school year and, if possible, the actual date the school will close.

The act also requires the chief administrator of each chartered nonpublic school that closes to deposit the school's records with either (1) the school's accrediting association or (2) the school district that received state auxiliary services funding on behalf of the school's students. In addition, the act allows the school district that receives the records to charge a one-time reimbursement from auxiliary services funding for costs the district incurs to store the records.

Auxiliary services funds

(R.C. 3317.06)

Under continuing law, school districts receive state "auxiliary services" funding to pay for secular textbooks and other materials and services for students attending chartered nonpublic schools within the district.[60] The act requires a school district to label materials, equipment, computer hardware or software, textbooks, and electronic textbooks purchased or leased with auxiliary services funds for loan to a chartered nonpublic school, acknowledging that the items were purchased or leased with state funds. However, the district is not required to label such materials that the district determines are consumable in nature or have a value of less than $200.

The act also adds social work to the list of services that may be provided to chartered nonpublic school students in addition to guidance and counseling services, which are already permitted under current law.

Per pupil cap on nonpublic administrative cost reimbursement

(R.C. 3317.063)

Under continuing law, the Superintendent of Public Instruction annually reimburses each chartered nonpublic school for administrative and clerical costs they incur from complying with state mandates. The act increases the limit for the reimbursement payments from $275 to $300 per pupil.

[60] R.C. 3317.024(I), not in the act.

Update of special education statutory language

(R.C. 3323.01 to 3323.20 and 3323.30; conforming changes in R.C. 3301.011, 3301.07, 3301.0714, 3301.12, 3310.41, 3311.51, 3311.521, 3313.532, 3313.64, 3313.841, 3313.843, 3313.97, 3313.974, 3313.977, 3313.978, 3313.98, 3313.983, 3314.06, 3314.061, 3314.08, 3314.083, 3317.01, 3317.013, 3317.02, 3317.022, 3317.023, 3317.03, 3317.031, 3317.032, 3317.05, 3317.051, 3317.052, 3317.06, 3317.07, 3317.08, 3317.15, 3317.16, 3317.19, 3317.20, 3317.201, 3321.03, 3325.011, 3325.02, 3327.01, 3327.16, 4513.241, 4731.053, 5123.012, 5126.04, 5126.041, 5126.05, and 5126.12)

The act updates statutory language regarding the provision of special education and related services for children with disabilities to align with federal law. Among other technical changes, the act changes the terms "handicap" to "disability," "handicapped child" to "child with a disability," and "handicapping condition" to "disabling condition" or "disability" as they are used throughout the Revised Code. The revised terms conform to those used in federal law.

The act also revises much of the statutory language describing how those services and a "free appropriate public education" must be provided by public schools. For example, the act revises the itemized list of contents of a child's "individualized education program" and the due process procedures available for a parent or child to challenge the content or implementation of that individualized education program. Again, the changes reflect current federal law and largely are not substantive. Moreover, since compliance with federal law regarding special education is already required of public schools under the Individuals with Disabilities Education Improvement Act of 2004 (and its predecessor acts), the act's changes do not appear to require any alteration in the delivery of those services.

Background

Under the federal Individuals with Disabilities Education Act (IDEA), children identified as disabled are entitled to a "free appropriate public education" that provides special education and related services to enable them to benefit from educational instruction. Related services include transportation and support services such as speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling services, and diagnostic medical services.[61] Under both the IDEA and state law, an "individualized education program" (IEP) must be developed for each child identified as disabled. The IEP specifies the services to which the child is entitled and are therefore

[61] 20 U.S.C. 1400 *et seq*.

guaranteed by law. The IEP is developed by a team including representatives of the child's resident school district (or community school) and the child's parent or the parent's counsel.[62]

Stipend for National Board certified teachers

(R.C. 3319.55)

Under continuing law, public and chartered nonpublic school teachers who hold valid certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. Under prior law, the amount of the stipend was $2,500 for a teacher who was accepted as a candidate for certification or licensure by the National Board by May 31, 2003, and was issued a certificate or license by December 31, 2004. The stipend for other teachers issued a certificate or license was $1,000.

The act sets the annual stipend at $2,500 for all teachers who have been issued a certificate or license by the National Board. It also eliminates the requirement for teachers to submit evidence of the date they were accepted into the certification program when applying for the stipend, because the amount of the stipend no longer depends on the date of certification.

Background

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 state stipend is available only during the first ten-year certification. If state funds appropriated for the stipend are insufficient to pay the full stipend to all eligible teachers, the stipend amounts must be pro-rated.

Appeals of student suspensions and expulsions

(R.C. 3313.66 and 3313.661)

The act specifies that in its student discipline policy, each school district board must state the date and manner by which a student or a student's parent, guardian, or custodian may notify the board of intent to appeal an expulsion or suspension to the board. The act further specifies that, in the case of an expulsion, the deadline for notice of appeal must be at least 14 days after the notice of intent to expel was provided to the student, parent, guardian, or custodian.

[62] 20 U.S.C. 1414 and R.C. 3323.01 and 3323.011.

Transfer of adult career-technical programs to Board of Regents

(Section 269.60.30)

The act directs the Chancellor of the Board of Regents, in collaboration with the Department of Education, to identify which "adult career-technical education programs" to transfer from the Department to the Board of Regents "to better align and maximize" Ohio adult workforce education "to improve the overall quality of adult education and training . . . offerings." The Chancellor must develop a plan, in consultation with the Department and with the identified programs, by July 1, 2008. The movement of the selected programs must be completed by January 1, 2009. The act authorizes the Director of Budget and Management to transfer budgetary appropriations to reflect the reorganization.

Agricultural education

(R.C. 3303.23)

The act requires the Superintendent of Public Education to appoint a Director of Agricultural Education within the Department of Education. The Director is responsible for disseminating information on agricultural education to school districts. In addition, the act requires the Department to maintain an "appropriate" number of full-time employees focusing on agricultural education. The act does not specify an exact number of employees, but requires that at least three of those employees be program consultants who provide regional assistance to school districts. One consultant may coordinate local Future Farmers of America activities.

Ohio Core curriculum

(R.C. 3313.603)

Under prior law, the Ohio Core curriculum required that a student take three units of science including one unit of biology to graduate. The act changes that biology specification to one unit of "life sciences." "One unit" means a minimum of 120 hours of course instruction, or 150 hours for a laboratory course.

Regional transportation collaboration study

(Section 269.20.83)

The act requires the Department of Education, by December 31, 2008, to report to the General Assembly recommendations for enhancing regional collaboration among school districts, educational service centers, community schools, and nonpublic schools in the provision of pupil transportation. The report

specifically must include a consideration of the role of educational service centers in the provision of transportation. In conducting its study, the Department must consult with the State Regional Alliance Advisory Board of the Educational Regional Service System.

Transportation of nonpublic school students

(R.C. 3327.05)

Generally, school districts may not transport students who reside in other districts. However, continuing law does permit a district to transport another's resident nonpublic *high school* student if the student's resident district does not provide transportation for public school students of the same grade as the student. In that case, the student's parent must agree to reimburse the district for the cost of transporting the student beyond the amount paid by the state.

The act amends that provision to further permit a district to transport another district's resident student of any grade level (not just high school) to the student's nonpublic school if the reason the resident district does not provide transportation is because the travel time is more than 30 minutes. It also provides that, if a district declines a parent's request for transportation, the district must state in writing its reasons for declining the request. If a district agrees to provide transportation for a nonresident student, the act specifically states that the district may count the student in the district's transportation ADM (ridership count) and, therefore, may receive a state payment for transporting the student.[63] It continues to require the student's parent to pay the excess costs, if any, for transporting the student.

Tuition for a child placed by a juvenile court

(R.C. 2151.362 and 3313.64)

Background

Every child is entitled to attend school free of tuition in at least one school district in the state. Generally, any child may attend school free of charge in the school district in which the child's parent lives. A child is entitled to attend school in the district in which the *child* (and not the child's parent) resides if:

[63] However, in each of FY 2008 and FY 2009, the act prescribes a 1% across-the-board increase in transportation subsidies for each school district. Therefore, changes in ridership counts will not affect state payments in those years. See "***State funding for school districts***," above.

(1) The child is in the legal custody of a government agency or some person other than the child's parent;

(2) The child resides in an institution, group home, foster home, or other licensed residential child care facility;

(3) The child requires special education services that are provided by that district; or

(4) The child's parent is institutionalized.[64]

In these cases, another school district or other entity usually must pay tuition on behalf of the child to the school district that is educating the child. Most often, the district in which the child's parent resides (or last resided, if the parent's current whereabouts is unknown) is responsible to pay the cost of educating the child.[65]

Under prior law, when a juvenile court removed a child from the parent's custody and placed that child in the custody of some other person or a government agency, the court was required to determine which school district was responsible for paying the cost of educating that child while in the custody of that person or agency. The court's determination was based on the parent's residence, as described above. Under law in effect prior to June 30, 2006, the district named in the court's order remained responsible for paying the cost of educating the child for as long as the child was in the custody of the person or government agency also named in the order. But under amendments effective on that date, the juvenile court, upon recommendation from the Department of Education, could change the responsible school district when the residency of the child's parent changed.

The act

The act provides, instead, for the juvenile court to make the *initial* determination of which district is responsible to the pay the cost of educating a child placed by the court, as it did under prior law, but leaves to the Department of Education to directly determine if a later change in responsible district is warranted. The Department is required to make this new determination if it is satisfied by evidence provided by the district currently named that the residence of the child's parent has changed. As under prior law, the act provides that if the Department cannot determine any Ohio district in which the parent currently

[64] R.C. 3313.64 and 3313.65 (the latter section not in the act).

[65] R.C. 3313.64(C) and 3313.65(D).

resides or has resided, the district designated in the initial court order, or in the Department's most recent determination, must continue to bear the cost of educating the child.

It appears that under the act the juvenile court does not have to reopen a child's custody case each time the parent changes residence, which it might have had to do under prior law in order to "modify" its order. The act specifies that in its initial order, the court must state that the determination of which district is responsible to bear the cost of educating the child is subject to "re-determination" by the Department. It is not clear, however, if the Department has the authority to make that re-determination in the instance of an existing order issued prior to the act's effective date, which would not contain that statement.

School district territory transfers

(R.C. 3311.24)

Under continuing law, the board of education of a city, local, or exempted village school district, at its own initiative, may submit to the State Board of Education a proposal to transfer some of the district's territory to an adjoining school district. Also, if a district board receives a petition proposing a transfer of territory, and the petition is signed by a number of that territory's voters equal to 75% of the territory's residents who voted in the last general election, the district board *must* submit the proposal to the State Board.

The act allows real property owners likewise to petition for a transfer to an adjoining district if no voters reside in the territory proposed for transfer. The petition must be signed by 75% of the owners of property within the territory. The district board must submit the petition to the county auditor to determine the sufficiency of the signatures. If the signatures are sufficient, the district board must submit the proposal to the State Board. If the State Board approves the transfer, as under continuing law, the transfer cannot be completed until: (1) the receiving district's board accepts the transfer by passing a resolution, (2) the transferring district board makes "an equitable division of the funds and indebtedness between the districts," and (3) the receiving district files an accurate map of the transferred territory with the county auditor of each affected county.

Disposal of school district real property

(Section 269.70.10)

The act temporarily permits a school district to sell real property by private sale to a community action agency that operates an early childhood education program, in lieu of offering the property for sale at public auction, or to a

community school, or to another government entity, as otherwise required by law, if all of the following conditions are met:

(1) The district is a "local" school district (i.e., it is not a city or exempted village district);

(2) The district is a countywide school district, in that it comprises most of the territory of one county, and most of the district's territory lies in one county;

(3) The district is abandoning the property because it is acquiring new facilities through one or more state-assisted classroom facilities programs;

(4) The property is suitable for use by the community action agency for its early childhood education program and for other operations of the agency; and

(5) The sale is completed on or before February 29, 2008.

School employee health care plans

(R.C. 9.833, 9.90, 9.901, 3313.202, 3313.33, 4117.03, and 4117.08; Sections 130.05 and 207.10.10; and Section 611.03 of Am. Sub. H.B. 66 of the 126th General Assembly)

The act implements the provisions related to health care plans for public school employee personnel that were previously delayed pending future specific and confirmatory action by the General Assembly in Am. Sub. H.B. 66 (biennial budget act) of the 126th General Assembly. The act's implementation of those provisions replaces the proposed program that was never in effect with a program that requires the School Employees Health Care Board to adopt a set of standards to be termed "best practices" to which all of the employee health care plans of a public school district and any combinations of public school districts must adhere. The act requires all policies or contracts for health care benefits provided to public school district employees that are issued or renewed after the expiration of any applicable collective bargaining agreements to contain the Board's best practices 12 months after the release of those best practices.

Function of the School Employees Health Care Board

(R.C. 9.901)

Under the act, the Board, in addition to adopting its "best practices," is required to oversee school districts' implementation of each district's health care plans including monitoring the district's adherence to best practices standards, providing educational outlets and consultation, requiring that the cost and design elements of the plans be transparent and available to the public, and promoting the

cooperation of all organizations involved to identify the elements necessary for successful implementation of this program. The act also authorizes the Board to adopt rules to enforce the Board's best practices standards.

A vetoed provision would have specified that the best practices standards developed by the Board must not duplicate or conflict with existing requirements with which health insuring corporations and sickness and accident insurers must comply pursuant to Chapters 1751. and 3923. of the Revised Code.

The act would have eliminated from the program the Board's responsibility to determine what strategies are used by the existing medical plans to manage health care costs and study the potential benefits of state or regional consortiums of public schools offering multiple health care plans, but those provisions were reinserted by the Governor's veto.

The act also would have eliminated the Board's responsibility to include disease management and consumer education programs, which must include wellness programs and other measures, designed to encourage the wise use of medical plan coverage and specified that these programs are not services or treatments for purposes of section 3901.71 of the Revised Code. The Governor's veto reinserts both the responsibility of the Board to include such information and the specification concerning those programs.

The act allows the Board to contract with independent consultants to analyze current health care plans offered by public school districts and make recommendations to the Board for the development and implementation of the Board's best practices and other programs for improving school districts' health care plans. The act would have removed the authority of the independent consultants to analyze the potential benefits of state or regional consortiums of public schools offering multiple health care plans and improving school districts' purchasing power for the acquisition of employee health care plans. However, the Governor's veto reinserts the consultant's authority to analyze those issues.

Under the act, the money appropriated to support the School Employee Health Care Board goes directly to the Board to be spent for all purposes approved under the program and permits the Board to employ staff as necessary.

School Employees Health Care Board

(R.C. 9.901; Section 130.05)

The act expands the membership of the School Employees Health Care Board from nine to twelve members, with the appointment of three additional members who represent nonadministrative employees of a public school district.

The Governor, the President of the Senate, and the Speaker of the House of Representatives each appoint one nonadministrative employee to the Board.

The act staggers the terms of the members of the Board. Under the act, the initial terms of the three members appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate to represent nonadministrative employees of a public school district as well as the terms of three other members whose terms are scheduled to end in September 2007, will be extended to end December 31, 2008. The initial terms of the remaining six members will be extended to end on December 31, 2010. Thereafter, the terms of the Board members are four years.

The act provides for compensation for the members according to the Department of Administrative Services pay ranges for boards pursuant to section 124.15 of the Revised Code. Rather than the current minimum of four meetings per year, the act requires the Board to meet at least nine times a year. The act also makes certain additional specifications about the public character of the Board's records and meetings.

Public Schools Health Care Advisory Committee

The act changes the membership of the Public Schools Health Care Advisory Committee created to make recommendations to the Board concerning the duties of the Board. Under the act, the Governor must appoint two representatives each from the Ohio Education Association, the Ohio School Boards Association, and a health insuring corporation licensed to do business in Ohio and recommended by the Ohio Association of Health Plans. The Speaker of the House of Representatives must appoint two representatives each from the Ohio Association of School Business Officials, the Ohio Federation of Teachers, and the Buckeye Association of School Administrators. The President of the Senate must appoint two representatives each from the Ohio Association of Health Underwriters, an existing health care consortium serving public schools, and the Ohio Association of Public School Employees. The act also specifies that the initial appointees will serve until December 31, 2007, and lengthens the terms thereafter to two years.

New audit duties

(R.C. 9.901)

The act specifies that the Auditor of State must audit the Board as well as, upon request, furnish to the Board copies of audits of public school districts and consortia already performed by the Auditor. A vetoed provision would have required the Superintendent of Insurance annually to evaluate the performance of

the School Employee Health Care Board best practices and submit the results to the Governor and the General Assembly. The vetoed provision specified that the Superintendent must include in the audits of any health care plan of a school district, consortia, or council of governments for which the Superintendent has jurisdiction a determination of the plan's adherence to best practices standards.

Other changes

(R.C. 9.833 and 9.901)

The act removes school districts from the definition of a "political subdivision" and specifies that charter schools are not included as public school districts for the purposes of section 9.901 of the Revised Code.

The act would have specifically excluded from the definition of "health care plan" a plan that provides coverage only for dental services or vision services paid for by the employees of a public school district. In addition, the act would have specified that the other group plan that provides only supplemental benefits excluded from the definition of health care plan included a group voluntary plan. However, the Governor's veto removed those provisions from the act.

The act makes other definitional and terminology changes that do not appear to have a substantive impact.

Issuance of securities by councils of governments that are information technology centers

(R.C. 167.10 and 167.101 to 167.105)

Background

Under continuing law, the governing bodies of any two or more political subdivisions, including school districts, may enter into an agreement with each other, or with political subdivisions in other states, to establish a regional council consisting of those political subdivisions. A council, once established, has authority to do various things that focus on cooperation among the various political subdivisions, the state, and federal government. Some of those things include, for example, (1) cooperation regarding common governmental problems including matters affecting health, safety, welfare, education, economic conditions, and regional development, (2) public facility project planning, and (3) performing functions and duties that are performed by members of the council.

A council, once established, may also serve as an information technology center, which is a component of the Ohio Education Computer Network administered by the Department of Education. A center receives funds

administered by the Department to provide computer services to city, local, exempted village, and joint vocational school districts and educational service centers.

Acquisition, construction, and improvement of property

(R.C. 167.10)

The act provides that a "qualifying council" may acquire, construct, and otherwise improve real and personal property to be used by or for the benefit of the qualifying council or one or more of its members. A "qualifying council" is a regional council of governments that both (1) is composed primarily of city, local, or exempted village school districts and (2) is an information technology center.

Financing the acquisition, construction, or improvement

(R.C. 167.10 and 167.101)

A qualifying council may finance the acquisition, construction, or improvement of property by cash, installment payments with or without a mortgage, lease-purchase agreements, or leases with an option to purchase. The qualifying council may also issue securities, which are defined under the act to mean bonds, notes, or other evidence of obligation issued in temporary or permanent form, including book-entry securities. The securities may be secured only by:

(1) A pledge of and lien on the revenue of the qualifying council, or such lesser portion of the revenue as may be designated by the council, whether derived from agreements with its members and other persons or from its ownership or operation of any property, including available rates, charges, rents, interest subsidies, debt charges, grants, or payments by federal or state agencies, but excluding funds received by the qualifying council from the Department of Education for being an information technology center; and

(2) Covenants of the qualifying council to maintain rentals, rates, and charges to produce revenue sufficient to (a) pay all the current expenses of the property financed with the securities' proceeds, (b) pay the securities' debt charges, and (c) establish and maintain any contractually required special funds relating to the securities or the property acquired, constructed, or improved.

The qualifying council also may issue securities to fund or refund the property acquisition, construction, or improvement securities and in anticipation of any of the proceeds of those securities.

Nature of the securities

(R.C. 167.102)

Securities issued for the acquisition, construction, or improvement of real and personal property to be used by or for the benefit of the qualifying council or one or more of its members are special obligation securities and are not general obligations of the state, the issuing qualifying council, the members of the issuing qualifying council, or any political subdivision of the state. The securities do not constitute debt for which the full faith and credit of the state or those subdivisions may be pledged. The holders or owners of the securities have no right to have money raised by taxation by the state or any political subdivision of the state obligated or pledged, and money so raised cannot be obligated or pledged, for the payment of principal or interest or premium on the securities, and each security must bear on its face a statement to that effect. Money received by the qualifying council from member governments of the council and the various other amounts received to support the council are not considered money raised by taxation under the act.

Security maturity and applicable law

(R.C. 167.104 and 167.105)

The act provides that the maximum maturity of the securities is governed by the Uniform Public Securities Law. That law sets out a schedule of maturities for securities depending on the reason for which they were issued that ranges from five years (new motor vehicles) to 50 years (the clearance and preparation of real property for redevelopment as an urban development project, for example). The act provides that, other than the Miscellaneous Bond Law (i.e., R.C. 9.98 to 9.983) and the provisions of the act, the securities issued to acquire, construct, and otherwise improve real and personal property to be used by or for the benefit of the qualifying council or one or more of its members are not subject to any other provision of the Revised Code governing the issuance of securities by the state, its agencies, or any political subdivision of the state.

Authority to execute necessary documents

(R.C. 167.103)

The act provides that the officers authorized by a qualifying council issuing securities to acquire, construct, and otherwise improve real and personal property to be used by or for the benefit of the qualifying council or one or more of its members must execute the necessary documents to provide for the pledge, protection, and disposition of the pledged revenues from which debt charges and

any special fund deposits are to be paid. Those necessary documents include the issued securities, trust agreements, leases, and other financing documents.

Student special services district (SSSD)

(R.C. 3313.82, 5705.01, 5705.219, and 5705.25)

The Governor vetoed provisions that would have permitted the boards of education of two or more city, local, or exempted village school districts, to enter into an agreement creating a student special services district (SSSD) to fund one or both of the following for students enrolled in those school districts and their immediate family members: (1) special education services and (2) behavioral health services for persons with special needs. An SSSD's territory would be composed of the combined territories of the member districts. The SSSD, with the approval of a majority of the member school district boards and then the voters of the SSSD, could have levied a property tax to fund SSSD services and operations.

A detailed description of the vetoed provisions is available on pages 139 through 143 of LSC's analysis of the Senate version of H.B. 119. The analysis is available online at www.lsc.state.oh.us/analyses127/h0119-ps-127.pdf.

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS (FUN)

- Corrects reinstatement fee references under Embalmer, Funeral Director, and Crematory Licensing Law.

Embalmer, Funeral Director, and Crematory Licensing Law

(R.C. 4717.07)

The act corrects several incorrect reinstatement fee references found in the Embalmer, Funeral Director, and Crematory Licensing Law in order to clarify what is the appropriate fee to be collected in each case.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

- Authorizes the Director of Environmental Protection to issue air pollution control operating permits with periods of validity of up to ten years rather than up to five years as in prior law.

- Would have extended the sunset of the operation of the enhanced motor vehicle inspection and maintenance program (E-Check) from December 31, 2007, to December 31, 2009, in those counties where the program was in operation on January 3, 2006 (VETOED).

- Would have repealed the law governing the E-Check program, stated that it was the intent of the General Assembly that the E-Check program not be extended beyond December 31, 2007, and authorized the Governor, if the Governor determined that the extension of a transportation-based ozone reduction program in the currently affected counties was necessary to comply with federal law, to extend Ohio's compliance efforts for one year by executive order, through a public bidding process, using the most cost effective, least costly, consumer accommodating, and decentralized available technology and approaches that met federal performance standards (VETOED).

- Would have authorized the Governor, if the Governor determined that continuation of the enhanced motor vehicle inspection and maintenance program was necessary to comply with federal law, to extend that program by executive order for an additional year or as otherwise required to comply with applicable law (VETOED).

- Would have stated that it was the intent of the General Assembly that a tailpipe motor vehicle inspection and maintenance program not be implemented in any county in Ohio and that, if a motor vehicle-based ozone testing program was mandated by federal law for counties in the northeastern portion of Ohio, a tailpipe motor vehicle inspection and maintenance program not be implemented and an onboard diagnostic inspection and gas-cap testing program be utilized to satisfy any federal requirements for vehicle emissions testing (VETOED).

- Would have specified that if any motor vehicle testing program was established, the Director of Environmental Protection would have had to

ensure that motor vehicles four years old or newer were exempt from the program (VETOED).

- Would have required the Director to annually request the United States Environmental Protection Agency to provide a list of alternative approaches to meet federal performance standards through program changes that Ohio could have employed to comply with the federal Clean Air Act in lieu of the implementation of a motor vehicle inspection and maintenance program, and would have required the Director to prepare a report concerning those alternative approaches and submit it to the General Assembly (VETOED).

- Extends from June 30, 2008, to June 30, 2010, the expiration date of the continuing state fees on the disposal of solid wastes that are used to fund the Environmental Protection Agency's solid, infectious, and hazardous waste and construction and demolition debris management programs and to pay the Agency's costs associated with administering and enforcing environmental protection programs.

- States that the Director of Environmental Protection has and retains jurisdiction to modify, amend, revise, renew, or revoke a permit, rule, order, or other action that has been appealed to the Environmental Review Appeals Commission, and applies that provision to any action of the Director that is the subject of an appeal to the Commission that is pending on the provision's effective date.

- Provides that a party to an appeal before the Commission is deemed to have appealed the applicable modification, amendment, revision, renewal, or revocation upon filing with the Commission and serving on all parties an objection, and prohibits the Commission from charging a fee for the filing of such an objection.

- 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;

--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

--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.

- Creates the Water Quality Protection Fund consisting of federal grants, including those made pursuant to the Federal Water Pollution Control Act, and contributions, and requires the Director to use the money in the Fund for water quality protection and restoration.

Air pollution control operating permits--period of validity

(R.C. 3704.03(G))

Continuing law authorizes the Director of Environmental Protection to issue air pollution control operating permits. Under prior law, the permits could be issued with periods of validity of up to five years. The act authorizes the Director to issue such permits with periods of validity of up to ten years.

E-Check

(R.C. 3704.14 and 4503.10)

Continuing law requires the Director of Environmental Protection to implement an enhanced motor vehicle inspection and maintenance program (E-Check) in counties in which a motor vehicle inspection and maintenance program is federally mandated. The enhanced program is required to last for a two-year period beginning on January 1, 2006. The program that is implemented by the Director must be substantially similar to the enhanced program implemented in those counties under a contract that expired on December 31, 2005. The enhanced program, as implemented by the Director, must 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 entered into under former law. Continuing law 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, continuing law specifically states that the enhanced program expires on December 31, 2007, and cannot be continued beyond that date unless otherwise federally mandated.

The Governor vetoed provisions in the act that would have repealed continuing law governing E-Check and declared that it was the intent of the General Assembly that the enhanced motor vehicle inspection and maintenance program that was in operation pursuant to the federal Clean Air Act on January 3, 2006, in certain counties of Ohio pursuant to a contract that is scheduled to expire on December 31, 2007, not be extended beyond that date in those counties. The act would have stated that if the Governor determined that the extension of a transportation-based ozone reduction program in those counties was necessary to comply with federal law, the Governor, by executive order, could extend the compliance efforts of this state for one year using the most cost effective, least costly, consumer accommodating, and decentralized available technology and approaches that met federal performance standards, using an open public bidding process. Thereafter, if the Governor determined that continuation of the enhanced motor vehicle inspection and maintenance program was necessary in those counties to comply with federal law, the Governor, by executive order, could extend that program for an additional year or as otherwise required to comply with applicable law. The cost of any program would have been required to be paid by the state from the Auto Emissions Test Fund, which would have been created in permanent law by the act. The Fund would have been required to consist of money appropriated to it and be administered by the Director of Environmental Protection.

An executive order issued under the act would have been required to include provisions providing the authority necessary for the Environmental Protection Agency to adopt decentralized approaches that met federal performance standards through program design changes that affect normal inspection and maintenance input parameters to the mobile source emission factor model or through program changes that reduced in-use mobile source emissions. Upon issuance of such an executive order, the Governor would have been required to notify the General Assembly in writing of the Governor's decision to issue the executive order.

The Governor also vetoed provisions that would have declared that it was the intent of the General Assembly that a tailpipe motor vehicle inspection and maintenance program not be implemented in any Ohio county. Moreover, it would have declared that it was the intent of the General Assembly that, if a motor vehicle-based ozone testing program was mandated by federal law for counties in the northeastern portion of Ohio, a tailpipe motor vehicle inspection and maintenance program not be implemented and that an onboard diagnostic only inspection and gas-cap testing program be utilized to satisfy any federal requirements for vehicle emissions testing. If any motor vehicle testing program was established under the act, the Director would have had to ensure that motor vehicles that were four years old or newer were exempt from the testing program.

Finally, the Governor vetoed provisions of the act that would have stated that not later than 30 days after the effective date of the above provisions and on the first day of January of each subsequent year, the Director would have to request the United States Environmental Protection Agency (USEPA) to provide to the Director a list of alternative approaches to meet federal performance standards and program changes that Ohio could employ to comply with the federal Clean Air Act in lieu of the implementation of a motor vehicle inspection and maintenance program. Based on the information received from USEPA, the Director would have had to prepare a report concerning those alternative approaches. The Director would have been required to issue the report and provide it to the General Assembly not later than 30 days after receiving the list of alternative approaches from USEPA.

State solid waste disposal fees

(R.C. 3734.57)

Continuing law levies three state fees 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 deposited in the state treasury to the credit of the Solid Waste Fund and used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The third fee is an additional $1.50 per-ton fee the proceeds of which must be deposited in the state treasury to the credit of the Environmental Protection Fund, which is used to pay the EPA's costs associated with administering and enforcing environmental protection programs. The solid waste disposal fees are collected by the owners and operators of solid waste disposal and transfer facilities as trustees for the state. The act extends from June 30, 2008, to June 30, 2010, the expiration date of the three state fees levied on the disposal of solid wastes.

Environmental Review Appeals Commission--Director of Environmental Protection Agency's jurisdiction

(R.C. 3745.04; Section 737.30)

Under continuing law, any person who was a party to a proceeding before the Director of Environmental Protection may participate in an appeal to the Environmental Review Appeals Commission for an order vacating or modifying the action of the Director or a local board of health or ordering the Director or board of health to perform an act. Continuing law declares that the Commission has exclusive original jurisdiction over any matter that may be brought before it. The act states that the Director of Environmental Protection has and retains jurisdiction to modify, amend, revise, renew, or revoke a permit, rule, order, or other action that has been appealed to the Commission. The modification, amendment, revision, renewal, or revocation is subject to applicable public participation and public notice requirements and is subject to an appeal under applicable statutes. Not later than 30 days after the issuance of the modification, amendment, revision, renewal, or revocation, the Director must file with the Commission and serve on each party to the existing appeal a statement notifying the Commission and the party that the appealed action was revoked or describing how the appealed action was modified, amended, revised, or changed as part of a renewal, as applicable. A party to the existing appeal is deemed to have appealed such a modification, amendment, revision, renewal, or revocation upon filing with the Commission and serving on all parties an objection to the modification, amendment, revision, renewal, or revocation. The objection must be filed with the Commission not later than 30 days after the Director files the statement with the Commission regarding the modification, amendment, revision, renewal, or revocation. The objection must state any new grounds of appeal resulting from the modification, amendment, revision, renewal, or revocation. The Commission cannot charge a fee for the filing of such an objection.

The act then applies the above provision to any action of the Director that is the subject of an appeal to the Commission that is pending on the provision's effective date.

Extension of various fee-related provisions

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under continuing law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. "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. Prior law required the fee to be paid through June 30, 2008. The act extends the fee through June 30, 2010.

Water pollution control fees and safe drinking water fees

(R.C. 3745.11(L), (M), and (N) and 6109.21)

Under law retained in part by the act, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of $100 plus 0.65 of 1% of the estimated project cost, up to a maximum of $15,000, when submitting an application through June 30, 2008, 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, 2008. Under the act, the first tier fee is extended through June 30, 2010, and the second tier applies to applications submitted on or after July 1, 2010.

Continuing law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under prior law, the fees were due by January 30, 2006, and January 30, 2007. The act extends payment of the fees and the fee schedules to January 30, 2008, and January 30, 2009.

In addition to the fee schedules described above, continuing law imposes a $7,500 surcharge to the annual discharge fee applicable to major industrial dischargers. Prior law required the surcharge to be paid by January 30, 2006, and

January 30, 2007. The act continues the surcharge and requires it to be paid annually by January 30, 2008, and January 30, 2009.

Under ongoing law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of $180. Under prior law, the fee was due annually not later than January 30, 2006, and January 30, 2007. The act continues the fee and requires it to be paid annually by January 30, 2008, and January 30, 2009.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in continuing law. The fee for initial licenses and license renewals formerly was required in statute through June 30, 2008, and had to be paid annually prior to January 31, 2008. The act extends the initial license and license renewal fee through June 30, 2010, and requires the fee to be paid annually prior to January 31, 2010.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. Ongoing law establishes a fee for such plan approval of $150 plus 0.35 of 1% of the estimated project cost. Under law retained in part by the act, the fee cannot exceed $20,000 through June 30, 2008, and $15,000 on and after July 1, 2008. The act instead specifies that the $20,000 limit applies to persons applying for plan approval through June 30, 2010, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2010.

Continuing 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. Under law retained in part by the act, a schedule with higher fees is applicable through June 30, 2008, and a schedule with lower fees is applicable on and after July 1, 2008. The act continues the higher fee schedule through June 30, 2010, and applies the lower fee schedule to evaluations conducted on or after July 1, 2010. The act continues through June 30, 2010, 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))

Law retained in part by the act establishes a $45 application fee to take the examination for certification as an operator of a water supply system or a wastewater system through November 30, 2008, and a $25 application fee on and after December 1, 2008. The act continues the higher application fee through November 30, 2010, and applies the lower fee on and after December 1, 2010. Under continuing 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 statutory schedule. Under law retained in part by the act, a higher schedule is established through November 30, 2008, and a lower schedule applies on and after December 1, 2008. The act extends the higher fee schedule through November 30, 2010, and applies the lower fee schedule beginning December 1, 2010.

Application fees under Water Pollution Control Law and Safe Drinking Water Law

(R.C. 3745.11(S))

Law retained in part by the act requires any person applying for a permit, other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of $100 at the time the application is submitted through June 30, 2008, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2008. The act extends the $100 fee through June 30, 2010, and applies the $15 fee on and after July 1, 2010.

Similarly, under law retained in part by the act, a person applying for an NPDES permit through June 30, 2008, must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2008, the nonrefundable application fee is $15. The act extends the $200 fee through June 30, 2010, and applies the $15 fee on and after July 1, 2010.

Water Quality Protection Fund

(R.C. 6111.0381)

The act creates in the state treasury the Water Quality Protection Fund consisting of federal grants, including grants made pursuant to the Federal Water Pollution Control Act, and contributions made to the Environmental Protection Agency for water quality protection and restoration. The Director of Environmental Protection must use money in the Fund for water quality protection and restoration.

eTECH OHIO COMMISSION (ETC)

- Would have added the President of the Ohio Alliance for Public Telecommunications as a voting member of the eTech Ohio Commission (VETOED).

- Would have required the chairperson of the Commission to be one of the public representatives (VETOED).

- Would have required advisory groups of the Commission to provide guidance about educational television and radio and radio reading services (in addition to educational technology, as in continuing law) (VETOED).

- Eliminates the requirement that the Commission approve the provision of financial and other assistance to educational technology organizations for the acquisition and utilization of educational technology.

- Requires the Commission to establish and maintain a clearinghouse of distance learning courses delivered by school districts via a computer-based method for sharing with other school districts or community schools for a fee.

- Authorizes conveyance of eTech Ohio-owned real estate on which eTech Ohio towers are located to the Office of Information Technology.

- Authorizes substitution of the Office of Information Technology as lessee in eTech Ohio leases of property on which eTech Ohio towers are located.

Membership and operation of Commission

The Senate-passed version of the bill contained several provisions affecting the membership and operation of the eTech Ohio Commission. It appears these provisions were inadvertently removed during conference committee and, therefore, were not part of the act. However, the Governor's veto message recognized the General Assembly's intent to include the changes in the act and indicated that had the changes been properly included, he would have vetoed them.

Commission membership

(R.C. 3353.02(B) and (F))

Under continuing law, voting members of the eTech Ohio Commission include six representatives of the public, the Superintendent of Public Instruction, the Chancellor of the Ohio Board of Regents, and the Director of the Office of Information Technology. Four members of the General Assembly, two from each chamber, serve as nonvoting members. The Commission's chairperson is appointed by the Governor from among all voting members.

The Governor vetoed a provision that would have added the president of the Ohio Alliance for Public Telecommunications as a voting member of the Commission. He also vetoed a provision that would have required the Governor to select the chairperson from among the Commission's six public representatives.

Advisory groups

(R.C. 3353.02(G))

Continuing law directs the Commission to establish advisory groups as needed to address topics of interest and provide guidance on educational technology issues, including the technology needs of educators, learners, and the public. Advisory group members are appointed by the Commission and must include representatives of individuals or organizations with an interest in the topic addressed by the group.

The Governor vetoed a provision that would have removed the specification that the Commission establish advisory groups only "as needed," which likely would have required the Commission to convene advisory groups on a permanent basis. He also vetoed a provision that would have specified that each advisory group be "comprised of" interested parties. That provision appeared to mean that the Commission could not appoint members to an advisory group unless they had a direct interest in the topic being addressed. Finally, the Governor vetoed a provision that would have eliminated the requirement for advisory groups to provide guidance on the technology needs of educators, learners, and the public, and instead would have required the groups to advise the Commission on educational television and radio and radio reading services, in addition to educational technology as in continuing law.

Assistance to educational technology organizations

(R.C. 3353.03)

Continuing law requires the eTech Ohio Commission to provide financial and other assistance to school districts, other educational institutions, and affiliates (educational television and radio stations and radio reading services) for the acquisition and utilization of educational technology. Formerly, educational technology organizations also could receive assistance upon approval of the Commission. The act removes the requirement for Commission approval of assistance for educational technology organizations and simply includes them in the list of other entities that are eligible for assistance.

Distance learning clearinghouse

(R.C. 3353.20 to 3353.30; conforming changes in R.C. 3314.086, 3317.023(P), and 3317.161)

The act directs the eTech Ohio Commission to establish a clearinghouse of interactive and other distance learning courses delivered via a computer-based method that are offered by school districts to students of other school districts and community schools for a fee. The Commission is not responsible for the content of the courses, but the Commission must approve the technical specifications by which the courses are delivered.

Inclusion of courses

The Commission must prescribe the form and manner through which a school district may apply to offer a course through the clearinghouse. The application must describe the course of study, the qualifications and credentials of the teacher, the number of hours of instruction, the technology required to deliver and receive the course, the technical capacity of the school district to deliver the course, the times that the district plans to deliver the course, and any other information required by the Commission. The act also requires the State Board of Education to adopt a resolution, within six months of the provision's effective date, that recommends types of information about a distance learning course that the Commission might require school districts to include in the application.

After reviewing the technical specifications of an application, if the Commission determines that the school district can satisfactorily deliver the course through the technology necessary for that delivery, the Commission must approve the course. The Commission may consult with the Department of Education and may request additional information from a school district applicant. The

Commission may also negotiate changes in a course proposal if the Commission determines that changes are necessary to approve the course.

The Commission must catalog each approved course through a print or electronic medium that includes (1) information necessary for a student, the student's parent, and the student's school district or community school to decide whether to enroll in the course and (2) instructions for enrolling in that course, including enrollment deadlines.

Enrollment

To take a course through the clearinghouse, students must be enrolled in a school operated by a school district or a community school (although the act authorizes the Commission to determine how private-school and home-schooled students may participate). The district or community school in which the student is enrolled must approve the course the student wishes to take, and must agree to accept for credit the grade assigned by the district delivering the course.

If a student enrolls in a course, the student's district or community school must send the student's EMIS data verification code and the student's name to the school district delivering the course.[66] The district delivering the course may request other information from the student's district or community school, which the district or community school must supply in accordance with state and federal student privacy laws.

The student's district or community school determines how and where the student will participate in the course, consistent with technology and connectivity specifications adopted by the Commission. The student's district or community school also prescribes how and by when a student may withdraw from a course. The grade a student receives for a course is assigned by the district that delivers the course. The delivering district must send that grade to the student's district or community school.

Payment

For each student enrolled in a clearinghouse course, both the student's school district or community school and the school district delivering the course must report to the Department of Education, through EMIS, the information the Department determines is necessary to make payments to the district delivering the course. Based on the reported information, the Department clearinghouse must deduct the fee from the student's school district's or community school's state

[66] A student's data verification code is the unique code assigned for purposes of the statewide Education Management Information System (EMIS).

account, and pay that amount to the school district delivering the course by the last day of the course. A student who takes a clearinghouse course must be counted in the formula ADM of a school district as if the student were taking the course from the student's school district or community school.

The fee is $175 per student for one-half unit (60 hours) of instruction, unless otherwise set by the Commission by rule. For courses less than or greater than one-half unit, the Commission must set fees proportionally. For example, if a course were for 120 hours of instruction (double the base), presumably the Commission would set the fee at $350. If a student withdraws prior to the end of the course, the Commission must proportionally reduce the fee.

Rules

The Commission must adopt rules in accordance with the Administrative Procedure Act to implement the clearinghouse. In addition, the Commission may determine how a course in the clearinghouse may be offered as a dual enrollment program,[67] to private-school or home-schooled students, or at times outside of the normal school day or school week.

The act states that the establishment of the distance learning clearinghouse does not prohibit a school district from offering an interactive distance learning course outside the clearinghouse.

Transfer of eTech Ohio towers to the Office of Information Technology

(Section 285.55)

The act authorizes the Governor to execute deeds in the name of the state granting all of the state's right, title, and interest in certain parcels of real estate on which stand eTech Ohio towers to the Office of Information Technology (OIT). These owned parcels are located in the counties of Summit, Richland, Wyandot, Jackson, Butler, Greene, Fairfield, Shelby, Cuyahoga, and Wayne.

The act also authorizes the Governor to execute leases in the name of the state substituting OIT for eTech Ohio as the lessee of certain parcels of real estate having eTech Ohio towers. These leased parcels are located in the counties of Mercer, Ashtabula, Holmes, Richland, and Geauga. eTech Ohio is required to

[67] Under R.C. 3313.6013 (not in the act), a "dual enrollment program" is defined as a program that enables a student to earn college credit while enrolled in high school or that enables a student to complete coursework in high school that may earn college credit upon the student's attainment of a specified score on an examination covering the coursework.

relinquish its right under each lease, and OIT is to be substituted as lessee under the same terms, provisions, and conditions specified in the lease agreement, subject to the lessor's consent.

All of eTech Ohio's rights, privileges, ownership, and control of the towers must be transferred to OIT by July 1, 2007. The substitution of OIT for eTech Ohio on leases and the conveyances from eTech Ohio to OIT also must be completed by that date The conveyances and substitutions are subject to eTech Ohio's continued right to use the towers and the premises on which the towers are located for transmission and broadcasting, to OIT policies and procedures, and to the completion of any legal surveys of the premises deemed necessary by the Office of Real Estate Services.

Deeds and renewable leases to implement the conveyances and substitutions must be prepared by the Auditor of State with the assistance of the Attorney General, executed by the Governor, countersigned by the Secretary of State, sealed with the Great Seal of Ohio, and presented for recording in the Office of the Auditor of State. A deed or lease must be delivered to the original grantor or lessor of each property for recording in the appropriate county recorder's office.

OFFICE OF THE GOVERNOR (GOV)

- Provides that the Governor's Residence Advisory Commission's powers and duties relating to the Governor's Residence do not affect the obligation of the Department of Administrative Services to provide for and adopt policies and procedures regarding the use, general maintenance, and operating expenses of the Residence.

- Authorizes the Commission to accept any payment for use of the Governor's Residence.

- Prohibits the Commission from accepting any donation, gift, bequest, or devise for the benefit of the Governor's Residence or its garden from a person, individual, or member of an individual's immediate family if the person or individual is receiving payments under a contract with the state or a state agency for the purchase of supplies, services, or equipment, or for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, excluding payments received under an employment contract or a collective bargaining agreement.

- Provides that no member of the Advisory Board for the Governor's Office of Faith-Based and Community Initiatives, and no organization that a member is affiliated or involved with, is eligible for a grant that the Office administers or assists in administering.

- Removes the requirement that the Speaker of the House of Representatives consult with the Legislative Black Caucus in appointing a member of the caucus to the Advisory Board of the Governor's Office of Faith-Based and Community Initiatives.

- Requires, by not later than July 1, 2008, that the Governor's Office of Faith-Based and Community Initiatives, with the assistance of the Advisory Board of the Governor's Office of Faith-Based and Community Initiatives, conduct a study of and make and recommendations about the feasibility and advisability of the Office becoming a private nonprofit entity rather than remaining a part of the Governor's office.

Use and operation of Governor's Residence

(R.C. 107.40(A), (B), and (I); Section 503.27)

Continuing law requires the Governor's Residence Advisory Commission to provide for the preservation, restoration, acquisition, and conservation of all decorations, objects of art, chandeliers, china, silver, statues, paintings, furnishings, accouterments, and other aesthetic materials that have been acquired, donated, loaned, or otherwise obtained by the state for the Governor's Residence, and makes the Commission responsible for the care, provision, repair, and placement of furnishings and other objects and accessories of the grounds and public areas of the first story of the Governor's Residence and for the care and placement of plants on the grounds.

Former law provided, however, that the Commission's duties described above did not affect the obligation of the Department of Administrative Services to provide for the general maintenance and operating expenses of the Governor's Residence. The act modifies this rule to provide that the Commission's duties described above do not affect the obligation of the Department of Administrative Services to provide for and adopt policies and procedures regarding the use, general maintenance, and operating expenses of the Governor's Residence.

Turning to another power of the Commission, continuing law authorizes the Commission to accept any donation, gift, bequest, or devise for the Governor's

Residence or as an endowment for the maintenance and care of the garden on the grounds of the Governor's Residence. The act also allows the Commission to accept any payment for the use of the Governor's Residence. Any revenue the Commission receives from these payments must be deposited into the Governor's Residence Fund.

Prohibition of acceptance of certain gifts for benefit of Governor's Residence

(R.C. 107.40(I))

Continuing law authorizes the Governor's Residence Advisory Commission to accept, for deposit into the Governor's Residence Fund, any donation, gift, bequest, or devise for the benefit of the Governor's Residence or its garden. The act, however, prohibits the Commission from accepting any such donation, gift, bequest, or devise from a person, individual, or member of an individual's immediate family if the person or individual is receiving payments under a contract with the state or a state agency for the purchase of supplies, services, or equipment, or for the construction, reconstruction, improvement, enlargement, alteration, repair, painting, or decoration of a public improvement, excluding payments received under an employment contract or a collective bargaining agreement.

Advisory Board for Governor's Office of Faith-Based and Community Initiatives

Continuing law creates an Advisory Board for the Governor's Office of Faith-Based and Community Initiatives. The Board consists of members appointed by the Directors of Aging, Alcohol and Drug Addiction Services, Rehabilitation and Correction, Health, Job and Family Services, Mental Health, and Youth Services; members of the General Assembly appointed by the Speaker of the House of Representatives and the President of the Senate; and representatives of the nonprofit or faith-based community appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate. The Board is required to provide direction, guidance, and oversight to the Office, and to publish a report of its activities each year.

Members of Advisory Board ineligible for grants

(R.C. 107.12(F))

The act provides that no member of the Advisory Board, and no organization that a member of the Board is affiliated or involved with, is eligible to receive any grant that the Office administers or assists in administering.

Speaker not required to consult Legislative Black Caucus in making appointments to Advisory Board

(R.C. 107.12(D)(1)(b))

The Speaker of the House of Representatives appoints two members of the House to the Advisory Board. The appointees must be members of different political parties, and at least one of them must be a member of the Legislative Black Caucus. The Speaker was required to consult with the President of the Legislative Black Caucus in making the latter appointment. The act removes the consultation requirement.

Study of the Governor's Office of Faith-Based and Community Initiatives becoming a private nonprofit entity

(Section 703.10)

Continuing law establishes within the office of the Governor, the Governor's Office of Faith-Based and Community Initiatives, and requires that the Office do all of the following:

- Serve as a clearinghouse of information on federal, state, and local funding for charitable services performed by organizations that are faith-based or other organizations, exempt from federal taxation under paragraph 501(c)(3) of the Internal Revenue Code, and provide charitable services to needy Ohio residents;

- Encourage these organizations to seek public funding for their charitable services;

- Act as a liaison between state agencies and these organizations; and

- Advise the Governor, General Assembly, and the Advisory Board of the Governor's Office of Faith-Based and Community Initiatives on the barriers that exist to collaboration between these organizations and governmental entities and on ways to remove the barriers. (R.C. 107.12(A) and (B).)

The act requires that the Governor's Office of Faith-Based and Community Initiatives, with the assistance of the Advisory Board of the Governor's Office of Faith-Based and Community Initiatives, conduct a study of the feasibility and advisability of the Office becoming a private nonprofit entity rather than remain a part of the Governor's office. The study and any resulting recommendations must be submitted, not later than July 1, 2008, to the Governor, the Speaker of the

House of Representatives, the President of the Senate, and the Minority Leaders of the House of Representatives and the Senate.

DEPARTMENT OF HEALTH (DOH)

- Extends, until June 30, 2009, the termination of the moratorium on review of applications for approval of long-term care beds under the Certificate of Need (CON) Program that was formerly scheduled to be July 1, 2007.

- Permits approval of a CON application to relocate long-term care beds to an existing facility within the same county when the facility has life safety code deficiencies, state fire code violations, or state building code violations, if the project identified in the application proposes to correct the facility's deficiencies or violations.

- Clarifies that the CON moratorium provisions are applicable under all of the statutes governing the CON Program.

- Modifies the procedures to be used by the Director of Health in reviewing CON applications and granting or denying CONs by (1) specifying that a proposed project must meet all applicable CON criteria for approval, (2) increasing to 30 (from 15) the number of days within which the Director must initially respond to a CON application, (3) reducing to 60 (from 90) the number of days within which the Director must grant or deny a CON when no objections to a project have been received, and (4) specifying that the Director may grant a CON with conditions that must be met by the holder.

- Allows the Certificate of Need Fund, which consists of CON application fees, to be used not only for paying the costs of administering the CON Program, but also for paying the costs of administering Department of Health programs for the following: (1) monitoring providers of certain health care services for compliance with safety and quality-of-care standards and (2) licensing ambulatory surgical facilities and other freestanding health care facilities.

- Allows the Office of Vital Statistics to support its operations through fees.

- Permits the Department of Health to enter into an agreement with the state's primary care association to promote the establishment of new federally qualified health centers (FQHCs) and FQHC look-alikes.

- Permits the Department and the state's primary care association to assist local communities and community health centers by providing grants and grant writing assistance to establish health centers.

- Extends participation in the Medical Liability Insurance Reimbursement Program to FQCH look-alikes.

- Permits the Department to establish a pilot program to place two FQHCs within or adjacent to hospital emergency departments.

- Requires the Director to conduct a pilot program in fiscal year 2009 for the purpose of awarding grants to up to four institutions of higher education to establish and operate offices that provide support to students who are pregnant or are the parents or legal guardians of one or more minors.

- Establishes in the Department the Autism Diagnosis Education Pilot Program and requires the Director to contract with a statewide association representing pediatricians to conduct or administer the Program.

- Provides that a patient who wishes to examine or obtain a copy of the patient's medical record must submit a written request dated not more than one year, instead of 60 days, before the date the request is submitted to the entity holding the record.

- Would have required the Department, through the Healthy Ohio Program, to develop an assessment template for the Department and other specified agencies to use to assess current practices and offer recommendations for improvement in specified areas (VETOED).

- Would have required the Department and each of the other specified agencies to conduct an assessment of itself using the template and submit the assessment results to the Healthy Ohio Program not later than January 1, 2008 (VETOED).

- Would have required the Department to organize and produce a summary report of the assessments and submit the report to the Governor, Speaker

and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate not later than February 1, 2008 (VETOED).

- Would have required the Department, through the Healthy Ohio Program, to initiate pilot programs throughout the state to provide financial support to entities that provide care coordination services to individuals at risk for catastrophic and expensive health conditions (VETOED).

- Suspends the operation of most of the provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law that was enacted by Sub. H.B. 231 of the 125th General Assembly until July 1, 2009, generally restores the law related to household sewage disposal systems that existed prior to that Law's enactment until July 1, 2009, and states that effective July 2, 2007, the rules adopted by the Public Health Council under that Law are not valid.

- Requires the Director of Health, not later than July 2, 2007, to adopt rules related to household sewage disposal systems that were in effect prior to January 1, 2007, and requires the Director to rescind those rules at the same time that the Public Health Council adopts rules related to household sewage disposal systems within 30 days after the provision's effective date as required by the act.

- Requires the Public Health Council to rescind rules related to sewage treatment systems, to reinstate the rules related to household sewage disposal systems that were in effect prior to January 1, 2007, with specified exceptions and pursuant to specified requirements, and to adopt new rules following the expiration of the suspension of the above Law.

- Establishes requirements, to be effective until the effective date of the new rules to be adopted by the Public Health Council, governing the duties of boards of health to approve or deny the use of sewage treatment systems and to inspect systems, establishing a $25 application fee for an installation permit to be used in part for grants for new technology pilot projects, and providing for training for the staffs of boards of health regarding best practices in the use of sewage treatment systems.

- Prohibits the Director of Health and the Public Health Council from adopting rules prior to July 1, 2009, that modify or change the

requirements established by the act concerning household sewage and small flow on-site sewage treatment systems.

- Revises the membership of, appointment procedures for, and duties of the Sewage Treatment System Technical Advisory Committee.

- Creates the Household Sewage and Small Flow On-Site Sewage Treatment System Study Commission to recommend standards concerning household sewage treatment systems and small flow on-site sewage treatment systems.

- Requires the Director of Health to prepare a report for the Study Commission containing recommendations regarding standards for household sewage treatment systems and small flow on-site sewage treatment systems, and requires the Director to survey boards of health concerning household sewage treatment system operations and the failure rates of those systems and issue a report concerning the survey to the Study Commission.

- Makes other changes in the law governing household sewage treatment systems and small flow on-site sewage treatment systems.

- Removes a limitation under which the Director of Health is to enter into a contract to make hospital performance information available on a web site only to the extent that the General Assembly has made an appropriation (VETOED).

Certificate of Need moratorium on long-term care activities

(R.C. 3702.68(former law); R.C. 3702.59 (the act))

Law unchanged by the act prohibits building or expanding the capacity of a long-term care facility without a certificate of need (CON) issued by the Director of Health. With respect to the recategorization of hospital beds as skilled nursing beds, ongoing law prohibits the Director from accepting CON applications to engage in that activity. Prior to the act's enactment, the Director was prohibited, until July 1, 2007, from accepting CON applications to engage in certain other long-term care activities.

The act continues, until July 1, 2009, the provisions previously scheduled to expire on July 1, 2007, that prohibit 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.

Continued review of CON applications during the moratorium

(R.C. 3702.59(C)(2)(a)(i))

Continuing law establishes exceptions to the moratorium on the Director's acceptance of CON applications for projects that would result in an increase in the number of long-term care beds. One of these exceptions applies in the case of a proposed increase that is attributable solely to a replacement or relocation of existing beds in the same county. To be eligible for this exception, three conditions must be satisfied before the Director can approve a CON application to add long-term care beds by relocation.

The act modifies one of these conditions. It permits the approval of a CON for relocation of beds to an existing facility that has waivers for life safety code deficiencies or violations of the state fire code or state building code, if the project identified in the CON application proposes to correct the deficiencies or violations.

Applicability of the moratorium within other CON statutes

(R.C. 3702.5211, 3702.5212, 3702.5213, 3702.59, 3702.591, and 3702.68; Section 105.03)

By relocating ongoing laws related to the CON moratorium on long-term care beds, the act clarifies that the laws governing the moratorium are included within the general administration of the CON program. The act also relocates other related CON statutes.

With respect to the continuation of the moratorium on recategorization of hospital beds after the other provisions of the moratorium expire June 30, 2009, the act expresses the continuation as part of the ongoing moratorium statute. The act eliminates the future version of the statute that would have expressed the same continuation.

Procedures and criteria used in granting CONs

(R.C. 3702.52(C) (primary); 3702.5211, 3702.5212, 3702.5213, 3702.57, 3702.59, 3702.591, and 3702.68)

Continuing law establishes procedures to be followed by the Director of Health in granting or denying a CON application. The act makes the following changes in these procedures:

(1) Specifies that a proposed project must meet all applicable CON approval criteria as a condition of receiving a CON for the project;

(2) Increases to 30 (from 15 under former law) the number of days within which the Director must mail a written notice responding to a CON application;

(3) Reduces to 60 (from 90 under former law) the number of days within which the Director must grant or deny a CON when the Director has not received any written objections to the CON application;

(4) Specifies that the Director is permitted to grant the CON with conditions that must be met by the holder of the CON;

(5) Eliminates provisions that describe the manner in which certain CON applications were to be handled in 1995, when Am. Sub. S.B. 50 of the 121st General Assembly began the process of phasing-out the CON requirements for most services other than long-term care.

Use of CON application fees

(R.C. 3702.52(B))

Law retained by the act requires CON applicants to pay an application fee established in rules adopted by the Public Health Council. Unless the rules establish a different amount, the fee for a project not involving a capital expenditure is $3,000; for a project involving a capital expenditure, the fee is 9/10 of 1% of the proposed expenditure, subject to a minimum of $3,000 and a maximum of $20,000. The application fees are deposited in the Certificate of Need Fund, which is to be used to pay the costs of administering the CON Program.

In addition to the Fund's uses under ongoing law, the act allows moneys in the Fund to be used to pay the costs of administering two other Department of Health programs: (1) a program for monitoring providers of certain health care services for compliance with safety and quality-of-care standards,[68] and (2) a program for licensing ambulatory surgical facilities and certain other health care facilities.[69]

Fees collected by the Office of Vital Statistics

(R.C. 3705.24)

Continuing law authorizes the Office of Vital Statistics to use fees charged for each certified copy of a vital statistic and each certification of birth to be used solely toward the modernization and automation of the system of vital records in Ohio. The act authorizes the Office of Vital Statistics to also use these fees to support the operations of the vital records program in Ohio.

FQHCs and FQHC look-alikes

Background

According to the Centers for Medicare & Medicaid Services (CMS) in the U.S. Department of Health and Human Services, federally qualified health centers (FQHCs) are safety net providers of healthcare. They include community health centers, public housing centers, outpatient health centers funded by the Indian Health Service, and programs serving migrants and the homeless. An entity may qualify as an FQHC if it (1) receives a grant under Section 330 of the federal Public Health Services (PHS) Act,[70] (2) receives funding from a PHS Act grant described in (1), above, under a contract with the recipient of such a grant and

[68] The safety and quality-of-care standards apply to the following: solid organ and bone marrow transplantation, stem cell harvesting and reinfusion, cardiac catheterization, open-heart surgery, obstetric and newborn care, pediatric intensive care, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives (R.C. 3702.11).

[69] In addition to licensing ambulatory surgical centers under this program, the Department of Health licenses freestanding dialysis centers, freestanding inpatient rehabilitation facilities, freestanding birthing centers, freestanding radiation therapy centers, and freestanding or mobile diagnostic imaging centers (R.C. 3701.30).

[70] Section 330 of the Public Health Service Act defines federal grant funding opportunities for organizations to provide care to underserved populations. Rural Assistance Center. FQHC Frequently Asked Questions (last visited June 11, 2007), available at <http://www.raconline.org/info_guides/clinics/fqhcfaq.php#whatis>.

meets the requirements to receive a grant under Section 330 of the PHS Act, or (3) is an outpatient health program or facility operated by a tribe or tribal organization under the federal Indian Self-Determination Act or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act as of October 1, 1991.[71]

An entity is a "FQHC look-alike" if the U.S. Secretary of Health and Human Services has determined that the entity meets the requirements for receiving a PHS Act grant but does not actually receive a grant. An FQHC look-alike is eligible for enhanced Medicaid and Medicare reimbursement, participation in the 340(b) Federal Drug Pricing Program,[72] and automatic designation as a Health Professional Shortage Area. Applicants for FQHC look-alike designation must be fully operational at the application date and (1) be a public or private nonprofit entity, (2) serve, in whole or in part, a designated "Medically Underserved Area" or "Medically Underserved Population,"[73] (3) meet the statutory, regulatory, and policy requirements for grantees supported under Section 330 of the Public Health Service Act, and (4) comply with the policy implementation documents for the Balanced Budget Act of 1997 amendment that

[71] Centers for Medicare & Medicaid Services. Fact Sheet: Federally Qualified Health Center (last visited June 11, 2007), available at <http://www.cms.hhs.gov/MLNProducts/downloads/2006fqhc.pdf>.

[72] The 340B Drug Pricing Program resulted from enactment of Public Law 102-585 (the "Veterans Health Care Act of 1992"), codified as Section 340B of the Public Health Service Act. Section 340B limits the cost of covered outpatient drugs to certain federal grantees, FQHC look-alikes, and qualified disproportionate share hospitals. Significant savings on pharmaceuticals may be achieved by entities that participate in this program. U.S. Department of Health and Human Services, Health Resources and Services Administration. Pharmacy Affairs and 340B Drug Pricing Program (last visited June 11, 2007), available at <http://www.hrsa.gov/opa/introduction.htm>.

[73] Medically Underserved Areas (MUAs) and Medically Underserved Populations (MUPs) have shortages of primary medical care, dental, or mental health providers and may be geographic (a county or service area) or demographic (e.g., have a high concentration of low income, Medicaid-eligible populations or have cultural or linguistic access barriers to primary medical care services). They are each assigned an Index of Medical Underservice (IMU) score, which is used to determine the eligibility of an area or population for MUA or MUP status. U.S. Department of Health and Human Services, Health Resources and Services Administration. Medically Underserved Areas/Medically Underserved Populations (MUA/MUP) (last visited June 11, 2007), available at <http://muafind.hrsa.gov/>.

added the requirement that an FQHC Look-Alike entity may not be owned, controlled, or operated by another entity.[74]

Promotion of new FQHCs

(R.C. 3701.047)

The act permits the Department of Health to enter into an agreement with the state's primary care association to promote the establishment of new FQHCs and FQHC look-alikes. At present, Ohio's primary care association is the Ohio Association of Community Health Centers.[75]

Grant and grantwriting assistance--"FQHC Incubator Program"

(R.C. 3701.047)

The act permits the Department of Health and the state's primary care association to assist local communities and community health centers by providing grants and grant writing assistance to establish "health centers" as this term is defined in Section 330 of the Public Health Services Act.[76] The Department and association must engage in this assistance regardless of whether a particular health center applies for a Section 330 grant.

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[74] U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care. FQHC Look-Alike Program (last visited June 11, 2007), available at <http://www.bphc.hrsa.gov/chc/lookalikes.htm>.

[75] U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Primary Health Care. Primary Care Association Web Sites (last visited June 11, 2007), available at <http://bphc.hrsa.gov/osnp/PCADirectory.htm>.

[76] Section 330 of the Public Health Services Act (codified in 42 U.S.C. 254b) defines a "health center" as, in general, an entity that serves a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing, by providing, either through the staff and supporting resources of the center or through contracts or cooperative arrangements (1) required primary health services, and (2) as may be appropriate for particular centers, additional health services necessary for the adequate support of the primary health services, for all residents of the area served by the center.

Medical Liability Insurance Reimbursement Program

(R.C. 2305.2341)

The main appropriations bill for the 2006-2007 biennium (Am. Sub. H.B. 66) created the Medical Liability Insurance Reimbursement Program. Under the Program, the Department of Health must reimburse participating free clinics[77] up to 80% of the premiums the clinics pay for medical liability insurance coverage for clinic staff and volunteer health care professionals and health care workers, up to a maximum of $20,000. The coverage must be limited to claims that arise out of the diagnosis, treatment, and care of patients of free clinics. To participate in the Program, a free clinic must provide certain information to the Department of Health at the time of registration. Continuing law provides that appropriations to the Department may be made from the General Revenue Fund to support this Program.

The act extends participation in the Medical Liability Insurance Reimbursement Program to FQCH look-alikes, including the centers' staff and volunteer health care professionals and health care workers. The act requires, however, that clinics that register for the Program receive priority over registered centers. In addition, the act specifies that participating FQHC look-alikes are subject to the requirements applicable to participating free clinics.

Pilot program--FQHCs in or adjacent to hospital emergency departments

(Section 293.27)

The act permits the Department of Health to establish a pilot program to place two FQHCs within or adjacent to hospital emergency departments. One health center must be in or adjacent to a hospital located in an urban area; the other must be located in or adjacent to a hospital located in a rural area.[78]

The act requires each hospital and health center to prepare and submit a report to the Governor and General Assembly, not later than one year after the health centers become operational, regarding the number of patients that received care at the health centers for nonemergency conditions rather than receiving care

[77] A free clinic is a nonprofit organization exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, or a program component of a nonprofit organization, whose primary mission is to provide health care services for free or for a minimal administrative fee to individuals with limited resources (R.C. 2305.2341(D)).

[78] The act does not define "urban area" or "rural area" for purposes of this requirement.

at the emergency department. If the Department does not establish the pilot program not later than one year after the act's effective date, the act requires the Department to submit a report to the Governor and the General Assembly explaining why the Department has not done so.

College Pregnancy and Parenting Offices Pilot Program

(Section 293.25)

The act requires the Director of Health to conduct a pilot program in fiscal year 2009 for the purpose of awarding grants to up to four institutions of higher education[79] to establish and operate offices that provide support to students who are pregnant or are the parents or legal guardians of one or more minors. Although the program must be established and operated during fiscal year 2009 only, the act requires that planning for the pilot program be commenced in fiscal year 2008.

The act permits an institution of higher education to apply for a grant by completing and submitting an application form supplied by the Director. The act permits the Director to require an institution that applies for a grant to submit additional information after the Director has reviewed the application.

Under the act, the Director must, before awarding a grant, secure a written agreement in which the proposed grantee commits to doing all of the following:

(1) Locating the office that provides support to students who are pregnant or are the parents or legal guardians of minors on the campus of the institution;

(2) Assessing the institution's performance in (a) offering health insurance plans to students that include coverage for prenatal and postpartum care and the riders for the coverage of additional family members, and (b) providing services or items that meet the needs of students who are pregnant or who are the parents or legal guardians of one or more minors, including family housing, child care, flexible or alternative academic scheduling, education concerning responsible parenting and healthy marriages, maternity and infant clothing, formula and baby food, and baby furniture;

(3) Identifying and establishing programs with public and private service providers located on campus and in the local community that are qualified to meet the needs described in (2)(b), above;

[79] The act defines "institution of higher education" as a public or private university or college in Ohio, including a community college or state community college.

(4) Assisting students in locating and obtaining the services that meet the needs described in (2)(b), above;

(5) Providing, on the request of an individual student, referrals for prenatal care and delivery, infant or foster care, or adoption. The act requires an office to make referrals only to persons or governmental entities that primarily serve parents, prospective parents awaiting adoption, pregnant women who plan to parent or place a child for adoption, or married couples or couples that plan on marrying in order to provide a supportive environment for each other and one or more minors.

(6) Providing, by a date determined by the Director, a written report to the Director that itemizes the office's expenditures during the fiscal year and meets the format or form the Director is required to establish under the act.

(7) Providing, after the Director's review of the report described in (6) above, any additional information requested by the Director.

The act permits the Director to adopt any rules necessary to implement the law governing the pilot program. These rules must be adopted in accordance with the Ohio Administrative Procedure Act.

Autism Diagnosis Education Pilot Program

(R.C. 3701.135; Sections 269.30.50 and 293.20)

The act establishes in the Department of Health the Autism Diagnosis Education Pilot Program. The Pilot Program must be administered by a statewide association representing pediatricians pursuant to a contract with the Director of Health. The act specifies that the Pilot Program has the following goals:

(1) To educate Ohio's health care professionals, teachers and other educational personnel, child care providers, parents, early intervention and developmental disabilities providers, and other community-based services providers regarding the diagnosis of autism spectrum disorders[80] including the range of symptoms that may indicate autism spectrum disorders and screening tools;

[80] According to the National Institute of Mental Health, the term, "autism spectrum disorder," refers to a cluster of disorders characterized by mild to severe degrees of impairment in verbal and nonverbal communication skills, social interactions, and restricted or repetitive patterns of behavior. (National Institute of Mental Health, http://www.nimh.nih.gov/publicat/autism.cfm, April 30, 2007.)

(2) To promote appropriate standards for the diagnosis of autism spectrum disorders in children, including screening tools and treatment planning for children diagnosed with autism spectrum disorders;

(3) To encourage physicians and other health care professionals with expertise in screening, diagnosing, and treating autism spectrum disorders to share that information with other health care professionals in Ohio;

(4) To encourage the regional coordination of services to facilitate the effective, timely treatment of children diagnosed with autism spectrum disorders.

Medical records access

(R.C. 3701.74)

Under former law, a patient, patient's personal representative,[81] or authorized person who wished to examine or obtain a copy of a patient's medical record had to submit a signed, written request to a health care provider or medical records company holding the record dated not more than 60 days before the request was submitted. The act requires the written request to be dated not more than one year before it is submitted.

Healthy Ohio assessment

(Section 293.35)

The Governor vetoed a provision that would have required the Department of Health, through the Healthy Ohio Program, to develop an assessment template for the Department and the Departments of Job and Family Services, Aging, Alcohol and Drug Addiction Services, Mental Retardation and Developmental Disabilities, and Mental Health to use to assess current practices and offer recommendations for improvement in the following areas:

(1) Specific interventions provided to improve outcomes measured on an individual basis, including measures taken to identify those in need of care, coordinate their care, and provide direct service interventions;

[81] A "patient's personal representative" means a minor patient's parent or other person acting in loco parentis, a court-appointed guardian, a person with durable power of attorney for health care for a patient, the executor or administrator of the patient's estate, or the person responsible for the patient's estate if it is not to be probated. An "authorized person" is a person to whom a patient has given written authorization to act on the patient's behalf regarding the patient's medical records. (R.C. 3701.74.)

(2) Cost of the care provided per individual served each fiscal year, including administrative and infrastructure costs;

(3) How money is tied to specific work completion with a basis for positive impact and positive outcomes and steps each department is making to ensure the people most at-risk receive the interventions;

(4) Strategies used in each department to eliminate service duplication, especially in the area of care coordination.

When developing the assessment template, the Department of Health would have been required to consult with associations representing health care providers, business interests, consumer advocates, insurance companies, and other interested parties affected by improved outcomes funding models.

Under the vetoed provision, each department would have been required to conduct an assessment of itself using the template and submit the assessment results to the Healthy Ohio Program not later than January 1, 2008.

The Department would have further been required to organize and produce a summary report of the assessments and submit the report to the Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate not later than February 1, 2008.

The Department, through the Healthy Ohio program, would have been required to initiate pilot programs throughout the state to provide financial support to entities that provide care coordination services to individuals at risk for catastrophic and expensive health conditions, as the Department determined. In providing the financial support, the Department would have been required to select entities committed to demonstrating achievements in (1) eliminating service duplication among entities, (2) ensuring positive outcomes for individuals by confirming an individual's connection to evidence-based interventions, and (3) improving focus on at-risk individuals. Care coordination service providers that participate in federal or state programs would have been eligible to participate in the pilot programs to the extent permitted by state and federal law. Participating entities would have been required to submit written progress reports to the Department, and the Department would have been authorized to provide financial support to participating entities only on a showing of improved outcomes and decreased duplication of services, as the Department determined.

Household and small flow on-site sewage treatment systems program

(R.C. 711.001, 711.05, 711.10, 711.131, 3718.02, 3718.022, 3718.03, 3718.05, 3718.06, 3718.07, 3718.08, 3718.09, 3718.10, 3718.99, 4736.01, 6111.04, 6111.44, and 6111.441; Sections 120.01, 120.02, 120.03, 120.04, 120.05, 737.10, 737.11, and 737.12)

Suspended law

Suspended law (see below), which was enacted by Sub. H.B. 231 of the 125th General Assembly, establishes a program governing the regulation of sewage treatment systems.[82] The program, as codified in Chapter 3718. of the Revised Code, the Household and Small Flow On-Site Sewage Treatment Systems Law, does the following:

--Requires the Public Health Council to adopt rules requiring a board of health to approve or disapprove the use of a sewage treatment system if it is not connected to a sanitary sewerage system;

--Requires the Council to adopt rules establishing standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems that may be used in Ohio;

--Requires the Council to adopt rules prescribing criteria and procedures under which boards of health must issue installation and operation permits for sewage treatment systems;

--Requires the Council to adopt rules requiring a board of health to inspect a sewage treatment system not later than 18 months after its installation;

--Requires a board of health to register sewage system installers, service providers, and septage haulers that work in the health district under a regulatory scheme that the Council must establish in rules;

[82] "Sewage treatment system" means a household sewage treatment system, a small flow on-site sewage treatment system, or both, as applicable, "household sewage treatment system" means any sewage treatment system, or part of such a system, that receives sewage from a single-family, two-family, or three-family dwelling, and "small flow on-site sewage treatment system" means a system, other than a household sewage treatment system, that treats not more than 1,000 gallons of sewage per day and that does not require a National Pollutant Discharge Elimination System permit or an injection well drilling or operating permit issued under the Water Pollution Control Law (R.C. 3718.01(D), (M), and (N), not in the act).

--Requires the Council to adopt rules that require a board of health and the manufacturer of a system, when possible, to provide instructions for the operation and maintenance of the system;

--Requires the Council to adopt rules that prescribe standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems that may be used in Ohio;

--Allows a board of health to regulate the siting, design, installation, operation, monitoring, maintenance, and abandonment of small flow on-site sewage treatment systems in accordance with the rules adopted by the Council;

--Authorizes a board of health to adopt rules necessary for public health providing for more stringent standards governing household sewage treatment systems, installers, service providers, or septage haulers than those established in the rules of the Public Health Council;

--Requires a board to first send written notification to the Director of Health and the Director of Environmental Protection if the board chooses to regulate small flow on-site sewage treatment systems;

--Creates the Sewage Treatment System Technical Advisory Committee for the purposes of developing guidelines with the Department of Health for use by the Director of Health in the approval or disapproval of sewage treatment systems for use in Ohio and advising the Director on the approval or disapproval of applications for approval of sewage treatment systems for that use;

--Requires a manufacturer of a sewage treatment system or a system component that differs in design or function from systems or components the use of which is authorized in rules adopted by the Public Health Council or a board of health to apply for approval of the system or component for use in Ohio;

--Provides for the establishment and collection of fees to be charged by local boards of health;

--Establishes judicial and administrative enforcement mechanisms; and

--Exempts sewerage or treatment works for the on-lot disposal of sewage from a small flow on-site sewage treatment system specifically from plan approval and general supervision requirements and generally from the administrative and permitting requirements established under the Water Pollution Control Law as well as from fees levied for those purposes if a board of health has notified the Director of Health and the Director of Environmental Protection that the board has chosen to regulate the system and the board remains in compliance with the rules adopted by the Public Health Council concerning such systems.

After the enactment of Sub. H.B. 231, the Public Health Council undertook the process of adopting the rules necessary to implement its requirements. That process took several years with the rules ultimately taking effect on January 1, 2007. During the rule adoption process, the rules adopted under former law continued in effect, and the Department of Health and local boards of health continued to regulate sewage treatment systems under those rules.

The act

Suspension of operation of Household and Small Flow On-Site Sewage Treatment Systems Law. During the period beginning July 1, 2007, and ending July 1, 2009, the act suspends the operation of most of the provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law that was enacted by Sub. H.B. 231 of the 125th General Assembly and restores the law related to household sewage disposal systems that existed prior to that Law's enactment during the suspension. However, the act does not suspend the operation of the provisions of the Law that allows boards of health to regulate small flow on-site sewage treatment systems and that creates the Sewage Treatment System Technical Advisory Committee (see "***Sewage Treatment System Technical Advisory Committee***," below). In order to effectuate the suspension, the act makes conforming changes to other sections of law that were amended by Sub. H.B. 231 of the 125th General Assembly. At the end of the suspension period, the act restores the provisions as they were amended by Sub. H.B. 231 of the 125th General Assembly. As a result of the suspension, the act generally requires household sewage treatment systems to be regulated under rules adopted by the Public Health Council pursuant to its authority to adopt, amend, or rescind sanitary rules of general application throughout the state (see below).

Rules governing household and small flow on-site sewage treatment systems. The act states that effective July 2, 2007, the rules adopted by the Public Health Council under the Household and Small Flow On-Site Sewage Treatment Systems Law that took effect on January 1, 2007, are not valid. The act requires the Director of Health, not later than July 2, 2007, to adopt rules that are identical to the rules adopted under former law by the Public Health Council that were in effect prior to January 1, 2007, except the rules that established requirements for separation distances from a water table and soil absorption requirements. At the same time that the Public Health Council adopts the rules required under the act as discussed below, the Director must rescind the rules adopted under the act.

Under the act, not later than 30 days after the provision's effective date and notwithstanding any provision of law to the contrary, the Public Health Council must rescind the rules adopted under Sub. H.B. 231 related to sewage treatment systems that took effect on January 1, 2007. At the same time as those rules are rescinded, the Council must adopt rules that are identical to the rules adopted

under former law that were in effect prior to January 1, 2007, except the rules that established requirements for separation distances from a water table and soil absorption requirements. Instead, a board of health or the authority having the duties of a board of health (hereafter, board of health) must adopt standards establishing requirements for separation distances from a water table and soil absorption requirements based on the water table and soils in the applicable health district for purposes of the installation and operation of household sewage treatment systems and small flow on-site sewage treatment systems in the applicable health district.

The rescission and adoption of rules by the Director of Health and the Public Health Council are not subject to the procedures required for the adoption of rules under the Administrative Procedure Act. However, the Director and the Public Health Council must file the rules in accordance with that Act. Upon that filing, the rules take immediate effect.

Under the former rules, persons who proposed to install or alter household sewage systems or to clean sewage tanks had to be registered by the board of health having jurisdiction where the work would be done. Registration requirements were established by the board of health; certificates of registration expired annually and had to be renewed within 30 days before their expiration. If the health commissioner of the health district found that a person registered by the district was engaging or had engaged in practices that violated the district's rules, the terms of a permit to install or repair a household sewage system, or applicable state laws, the board of health was required to notify the person, describe the violation, and provide an opportunity for a hearing prior to revocation or suspension of the person's registration. Council rules also required that a permit be obtained from the board of health having jurisdiction before a household sewage system was installed or altered. A permit was valid until the installation or alteration was completed or for one year after issuance, whichever was earlier. The design, construction, installation, location, maintenance, and operation of household sewage disposal systems had to conform to the Council's rules, engineering practices acceptable to the Department of Health, and effluent standards of the Environmental Protection Agency.

A board of health was authorized to adopt standards for household sewage systems that were more stringent than those of the Council when local conditions required more stringent standards. A board of health also was authorized to grant a variance from its rules or those of the Council if the variance was not contrary to the public interest and the applicant for the variance showed that strict application of the rules would cause an unusual and unnecessary hardship because of practical difficulties or other special conditions.

The act specifically authorizes a board of health to adopt standards for use in the health district that are more stringent than those of the Director of Health or the Public Health Council, provided that the board adopting such standards considers the economic impact of those standards on property owners, the state of available technology, and the nature and economics of the available alternatives. If a board of health adopts standards that are more stringent, the board must send a copy of the standards to the Department of Health.

Finally, the act requires the Public Health Council, after the suspension period of the Household and Small Flow On-Site Sewage Treatment Systems Law expires, to adopt new rules governing the regulation of sewage treatment systems in the state. In doing so, the Public Health Council must consider the economic impact of those rules on property owners, the state of available technology, and the nature and economics of the available alternatives.

Duties of boards of health concerning use of systems. The act requires a board of health to approve or deny the use of household sewage treatment systems and small flow on-site sewage treatment systems in the applicable health district. The act defines "household sewage treatment system," "small flow on-site sewage treatment system," and "sewage treatment system" to have the same meaning as in the Household and Small Flow On-Site Sewage Treatment Systems Law (the operation of the definition section of that Law is not suspended by the act). In approving or denying a household sewage treatment system or small flow on-site sewage treatment system for use in the health district, the board must consider the economic impact of the system on property owners, the state of available technology, and the nature and economics of the available alternatives, ensure that a system will not create a public health nuisance, and require a system to comply with all of the requirements discussed below. For purposes of the act's provisions governing the duties of a board of health concerning the use of sewage treatment systems, "economic impact" means all of the following with respect to the approval or denial of a household sewage treatment system or small flow on-site sewage treatment system, as applicable: (1) the cost of a proposed system, (2) the cost of an alternative system that will not create a public health nuisance, (3) a comparison of the costs of repairing a system as opposed to replacing the system with a new system, and (4) the value of the dwelling or facility, as applicable, that the system services as indicated in the most recent tax duplicate.

For purposes of the act's provisions governing sewage treatment systems, a public health nuisance must be deemed to exist when an inspection conducted by a board of health documents odor, color, or other visual manifestations of raw or poorly treated sewage and either of the following applies: (1) water samples exceed 5,000 fecal coliform counts per 100 milliliters (either MPN or MF) in two or more samples when five or fewer samples are collected or in more than 20% of

the samples when more than five samples are taken, or (2) water samples exceed 576 E. Coli counts per 100 milliliters in two or more samples when five or fewer samples are collected or in more than 20% of the samples when more than five samples are taken.

The act states that notwithstanding any rule adopted by the Director of Health or the Public Health Council or standard adopted by a board of health governing the installation and operation of sewage treatment systems, a board of health must ensure that the design and installation of a soil absorption system prevents public health nuisances. To the extent determined necessary by a board, a sewage treatment system that is installed after the provision's effective date cannot discharge to a ditch, stream, pond, lake, natural or artificial waterway, drain tile, other surface water, or the surface of the ground unless authorized by a national pollutant discharge elimination system (NPDES) permit issued under the Water Pollution Control Law and rules adopted under it. In addition, a sewage treatment system cannot discharge to an abandoned well, a drainage well, a dry well or cesspool, a sinkhole, or another connection to ground water. As a condition to the issuance of a permit to operate a system, a board of health must require a service contract for any sewage treatment system that is subject to an NPDES permit to the extent required by the Environmental Protection Agency. If classified as a class V injection well, a household sewage treatment system serving a two- or three-family dwelling or a small flow on-site sewage treatment system must comply with specified federal regulations and with the registration requirements established in state rules.

Furthermore, notwithstanding any rule adopted by the Director of Health or the Public Health Council or standard adopted by a board of health governing the installation and operation of household sewage treatment systems, all septic tanks, other disposal component tanks, dosing tanks, pump vaults, household sewage disposal system holding tanks and privy vaults, or other applicable sewage disposal system components manufactured after the provision's effective date and used in Ohio must be watertight and structurally sound.

Fees; Sewage Treatment System Innovation Fund. The act authorizes a board of health, notwithstanding any rule adopted by the Director of Health or the Public Health Council governing the installation and operation of household sewage treatment systems, to establish and collect fees for the purpose of administering the act's provisions regarding sewage treatment systems. In addition, the act levies a $25 application fee for a sewage treatment system installation permit. A board of health must collect the fee on behalf of the Department of Health and forward the fee to the Department to be deposited in the state treasury to the credit of the Sewage Treatment System Innovation Fund, which is created by the act. Not more than 75% of the money in the Fund must be

used by the Department to administer the sewage treatment system program, and not less than 25% of the money in the Fund must be used to establish a grant program in cooperation with boards of health to fund the installation and evaluation of new technology pilot projects. In the selection of the pilot projects, the Director of Health must consult with the Sewage Treatment System Technical Advisory Committee created in the Household and Small Flow On-Site Sewage Treatment Systems Law (see "***Sewage Treatment System Technical Advisory Committee***," below).

Inspection of systems. The act requires a board of health to inspect a household sewage treatment system not later than one year after installation of the system to ensure that it is not a public health nuisance.

Regulation of small flow on-site sewage treatment systems by boards of health. The act states that notwithstanding any rule adopted by the Director of Health or the Public Health Council governing the installation and operation of household sewage treatment systems, a board of health that, prior to the provision's effective date, has obtained authority from the Department of Health and the Environmental Protection Agency to regulate small flow on-site sewage treatment systems may continue to regulate such systems on and after the provision's effective date. A board of health that has not obtained such authority may request the authority from the Department and the Environmental Protection Agency in the manner provided by law.

Because the act rescinds the rules governing the regulation of small flow on-site sewage treatment systems that were effective on January 1, 2007, the references to those rules in the provision of the Household and Small Flow On-Site Sewage Treatment Systems Law concerning the regulation of small flow on-site sewage treatment systems by boards of health are not operable. Instead, the act requires the Director of Health or the Public Health Council, as applicable, to adopt rules for the implementation of that provision of the Household and Small Flow On-Site Sewage Treatment Systems Law.

Training in best practices in use of sewage treatment systems. The act requires the Department of Health in cooperation with a board of health to assess the familiarity of the board's staff with the best practices in the use of sewage treatment systems and conduct appropriate training to educate the board's staff in those best practices and in the use of any new sewage treatment system technology that is recommended for use by the Sewage Treatment System Technical Advisory Committee (see below).

Injunctive action by Department of Health. The act authorizes the Department of Health to file an injunctive action against a board of health that allows a household sewage treatment system or small flow on-site sewage

treatment system to cause a public health nuisance, provided that the Department provides reasonable notice to the board and allows for the opportunity to abate the nuisance prior to the action.

Off-lot sewage treatment systems. The act prohibits the Environmental Protection Agency from requiring a board of health to enter into a memorandum of understanding or any other agreement with the Agency regarding the issuance of NPDES permits for off-lot sewage treatment systems. Instead, a representative of a board of health may meet with a person who intends to install such a system to determine the feasibility of the system and refer the person to the Agency to secure an NPDES permit for the system if needed. The Agency, within 90 days or as quickly as possible after the provision's effective date, must seek a revision to the general NPDES permit, issued pursuant to the federal Water Pollution Control Act, in order not to require a memorandum of understanding with a board of health and that allows a property owner to seek coverage under the general NPDES permit for purposes of the act's provisions governing off-lot sewage treatment systems. A board of health voluntarily may enter into a memorandum of understanding with the Agency to implement the general NPDES permit. In the interim, the Agency must work with boards of health and with property owners in order to facilitate the owners' securing an NPDES permit in counties without a memorandum of understanding.

Prohibition against adoption of certain rules by Director of Health and Public Health Council. The act prohibits the Director of Health and the Public Health Council from adopting rules prior to July 1, 2009, that modify or change the requirements established by the act concerning household sewage and small flow on-site sewage treatment systems.

Expiration of authority established by act. The act states that the above provisions concerning the regulation of household sewage treatment systems and small flow on-site sewage treatment systems expire on the effective date of the rules that are to be adopted under the provision of the Household and Small Flow On-Site Sewage Treatment Systems Law governing the adoption of rules when that provision becomes operational on July 1, 2009.

Sewage Treatment System Technical Advisory Committee. Law retained in part by the act creates the Sewage Treatment System Technical Advisory Committee consisting of the Director of Health or the Director's designee and ten members who are knowledgeable about sewage treatment systems and technologies to be appointed by the Director. Of the ten members, one must represent academia, two must represent the interests of manufacturers of household sewage treatment systems, one must represent installers and service providers, two must be health commissioners who are members of and recommended by the Association of Ohio Health Commissioners, one must be a

registered sanitarian who is a member of the Ohio Environmental Health Association, one must be an engineer from the Environmental Protection Agency, one must be selected from among soil scientists from the Division of Soil and Water Conservation in the Department of Natural Resources, and one must be a representative of the public who is not employed by the state or any of its political subdivisions and who does not have a pecuniary interest in sewage treatment systems.

The act revises the membership of the Committee as well as the appointment procedures. It retains the Director of Health or the Director's designee as a member. However, the act requires four members to be appointed by the Governor, three members to be appointed by the President of the Senate, and three members to be appointed by the Speaker of the House of Representatives as follows:

(1) Of the members appointed by the Governor, one must represent academia, one must be a representative of the public who is not employed by the state or any of its political subdivisions and who does not have a pecuniary interest in household sewage treatment systems, one must be an engineer from the Environmental Protection Agency, and one must be selected from among soil scientists in the Division of Soil and Water Conservation in the Department of Natural Resources;

(2) Of the members appointed by the President of the Senate, one must be a health commissioner who is a member of and recommended by the Association of Ohio Health Commissioners, one must represent the interests of manufacturers of household sewage treatment systems, and one must represent installers and service providers; and

(3) Of the members appointed by the Speaker of the House of Representatives, one must be a health commissioner who is a member of and recommended by the Association of Ohio Health Commissioners, one must represent the interests of manufacturers of household sewage treatment systems, and one must be a registered sanitarian who is a member of the Ohio Environmental Health Association.

Notwithstanding any provision of law to the contrary, the act terminates on January 1, 2008, the terms of office of the members of the Committee whose terms expire in 2008 and 2009. The Governor, the President of the Senate, and the Speaker of the House of Representatives must appoint new members to the Committee in accordance with the procedures discussed above to replace the members whose terms are terminated. However, members appointed to replace the members whose terms were to expire in 2009 must be appointed for a term of four years instead of three years as required under continuing law. Members

whose terms expire on January 1, 2008, by the operation of the act may be reappointed by the Governor, the President of the Senate, or the Speaker of the House of Representatives in accordance with the act. Except as noted above, terms of office continue to be three years.

The act requires the Committee to annually select a chairperson and a vice-chairperson from among its members rather than having the Director of Health serve as the chairperson as in former law. In addition, the act makes conforming changes in the law to reflect the above changes.

Law largely retained by the act requires the Committee to do all of the following:

(1) Develop with the Department of Health standards and guidelines for use by the Director in approving or disapproving a sewage treatment system or components of a system under the Household and Small Flow On-Site Sewage Treatment Systems Law (the act eliminates the phrase "use by the Director in," thus requiring the Committee to develop with the Department standards and guidelines for approving or disapproving systems or components of systems under that Law);

(2) Develop with the Department an application form to be submitted to the Director by an applicant for approval or disapproval of a sewage treatment system or components of a system and specify the information that must be included with an application; and

(3) Advise the Director on the approval or disapproval of an application sent to the Director requesting approval of a system or components of a system.

The act establishes two additional duties of the Committee. First, the Committee must pursue and recruit in an active manner the research, development, introduction, and timely approval of innovative and cost-effective household sewage treatment systems and components of a system for use in Ohio, which must include conducting pilot projects to assess the effectiveness of a system or components of a system. Second, by January 1, 2008, the Committee must provide the Household Sewage and Small Flow On-Site Sewage Treatment System Study Commission created by the act with a list of available alternative systems and the estimated cost of each system (see "***Household Sewage and Small Flow On-Site Sewage Treatment System Study Commission***," below).

Household Sewage and Small Flow On-Site Sewage Treatment System Study Commission. The act creates the Household Sewage and Small Flow On-Site Sewage Treatment System Study Commission consisting of the following members:

(1) A representative of the Department of Health appointed by the Director of Health;

(2) A representative of the Environmental Protection Agency appointed by the Director of Environmental Protection;

(3) A representative of the Department of Natural Resources appointed by the Director of Natural Resources;

(4) Five members appointed by the Association of Ohio Health Commissioners, one of whom must be from the northwest region of the state, one from the northeast region of the state, one from the southwest region of the state, one from the southeast region of the state, and one from the central region of the state. In making the appointments, special consideration must be given to a county in which at least 25% of the parcels of land are serviced by sewage treatment systems.

(5) One member appointed by the Association of Ohio Pedologists;

(6) One member appointed by the County Commissioners Association of Ohio;

(7) One member appointed by the County Engineers Association of Ohio;

(8) One member appointed by the Ohio Association of Realtors;

(9) One member appointed by the Ohio Environmental Council;

(10) One member appointed by the Ohio Environmental Health Association;

(11) One member appointed by the Ohio Home Builders Association;

(12) One member appointed by the Ohio Manufactured Housing Association;

(13) Two members appointed by the Ohio Onsite Wastewater Association;

(14) One member appointed by the Ohio Precast Concrete Association;

(15) One member appointed by the Ohio Public Health Association;

(16) One member appointed by the Ohio State University Extension;

(17) One member appointed by the Ohio Township Association;

(18) One member appointed by the Ohio Waste Haulers Association;

(19) Three members of the House of Representatives appointed by the Speaker of the House of Representatives, two from the majority party and one from the minority party;

(20) Three members of the Senate appointed by the President of the Senate, two from the majority party and one from the minority party;

(21) One member appointed by the Ohio Farm Bureau Federation;

(22) One member appointed by the Ohio Farmers Union; and

(23) One member appointed by the Ohio Society of Professional Engineers.

All appointments must be made not later than 30 days after the provision's effective date. One member of the Senate and one member of the House of Representatives jointly designated by the President of the Senate and the Speaker of the House of Representatives must serve as co-chairpersons. The Commission must hold its first meeting not later than 60 days after the provision's effective date and must hold regular meetings as necessary after the initial meeting.

The act requires the Commission to study issues concerning household sewage treatment systems and small flow on-site sewage treatment systems and recommend appropriate legislation to the General Assembly establishing reasonable standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems and small flow on-site sewage treatment systems for the purpose of the treatment of sewage and the prevention of public health nuisances. In making the recommendations, the Commission must consider the economic impact of the standards on property owners, the state of technology currently utilized in household sewage treatment systems and small flow on-site sewage treatment systems, and the nature and economics of available alternatives to that technology. The Commission also must explore and establish recommendations regarding funding sources for and mechanisms for providing assistance to homeowners for paying the cost of compliance with the new proposed standards.

Not later than December 1, 2008, the Commission must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. Upon the submission of the report, the Commission ceases to exist.

Reports by Director of Health. The act requires the Director of Health to issue a report to the Household Sewage and Small Flow On-Site Sewage

Treatment System Study Commission that includes recommendations regarding standards for the siting, design, installation, operation, monitoring, maintenance, and abandonment of household sewage treatment systems and small flow on-site sewage treatment systems. The recommendations must include information concerning the cost and state of technology currently utilized in household sewage treatment systems and small flow on-site sewage treatment systems and the nature and economics of available alternatives to that technology. The Director must issue the report to the Commission not later than January 1, 2008.

In addition, the act requires the Director to conduct a survey of boards of health in this state concerning household sewage treatment system operations and the failure rates of those systems. The Director must issue a report concerning the survey to the Commission not later than June 1, 2008. The act requires boards of health to provide, in a timely manner, any and all relevant information pertaining to the household sewage treatment system program that is requested by the Director under the act and that the Director determines to be necessary for completion of the survey.

Hospital performance web site contract

(R.C. 3727.391)

Current law requires the Director of Health to enter into a contract to make hospital performance information available on a web site. However, this requirement applies only to the extent that the General Assembly has made an appropriation for this purpose. The act would have removed the limitation that the Director is to enter into a contract only to the extent that the General Assembly has made the appropriation. The Governor vetoed removal of the limitation.

OFFICE OF THE INSPECTOR GENERAL (IGO)

- Allows the Inspector General to employ and fix the compensation of employees of the Office of the Inspector General.

- Requires the Inspector General to certify to the Director of Budget and Management the costs that the Inspector General expects the deputy inspector general for the Department of Transportation to incur during the fiscal year or lesser period and requires that the transfers made by the Director of Budget and Management of the amounts certified to the deputy inspector general for ODOT Fund be in accordance with a schedule considered appropriate by the Inspector General subject to specified restrictions.

Employees of the Inspector General

(R.C. 121.48)

Provides that the Inspector General may employ and fix the compensation of one or more deputy inspectors general and professional, technical, and clerical employees. Former law provided that the Inspector General could appoint one or more deputy inspectors general and professional, technical, and clerical employees but did not specify any duties or authority of the Inspector General with respect to their compensation.

Deputy inspector general for the Department of Transportation

(R.C. 121.51)

The act provides that the Inspector General must certify to the Director of Budget and Management the costs, including the salaries of the deputy inspector general for the Department of Transportation and the employees assisting the deputy inspector general, that the Inspector General expects the deputy inspector general to incur during the fiscal year or such lesser period for which the certification is made. Former law required the Inspector General to certify to the Director of Budget and Management the costs incurred by the deputy inspector general, including the salaries of the deputy inspector general and employees assisting the deputy inspector general.

Continuing law requires the Director of Budget and Management to transfer the amounts certified to the deputy inspector general for ODOT Fund, created in the state treasury, from the appropriation made to the Department of Transportation from which expenditures for general administrative purposes, as distinguished from specific infrastructure projects, are made. The act requires that the transfers be made in accordance with a schedule that the Inspector General considers to be appropriate but cannot be in amounts that would create a balance in the Fund in excess of need or that would exceed the amount appropriated from the Fund.

DEPARTMENT OF INSURANCE (INS)

- Extends the exemption from the 5% foreign insurers premium tax to any type of insurance procured by an entity in which the majority of its business involves pharmaceutical products.

- Requires both group and individual policies of sickness and accident insurance to provide coverage for the diagnosis and treatment of biologically based mental illnesses on the same terms and conditions, and with the same benefits provided, as the treatment of all other physical disorders covered by that policy with certain exceptions.

Foreign insurers tax

(R.C. 3905.36; Section 739.10)

Under continuing law, with certain exceptions, every insured association, company, corporation, or other person that enters into any agreements, either directly or through a surplus lines broker, with any insurance company, association, individual, firm, underwriter, or Lloyd's, not authorized to do business in this state ("foreign insurer"), to procure, continue, or renew insurance covering subjects resident in Ohio must do both of the following annually: (1) return to the Superintendent of Insurance a form containing certain business activity and premium collections information and (2) pay to the Treasurer of State (for deposit into the GRF) a tax equal to 5% of the gross premium, fee, assessment, dues, or other consideration for the insurance.

This foreign insurers premium tax does not apply to professional or medical liability insurance procured by an entity in which the majority of its business involves pharmaceutical products. The act broadens that exception to include any type of insurance procured by such an entity.

Uncodified language in the act specifies that the act amends the law governing the foreign insurers premium tax "for the purpose of clarifying the intent of the 126th General Assembly." Under the act, notwithstanding any provision of section 3905.36 of the Revised Code to the contrary, all agencies and departments of the state or any political subdivision must apply the legislative intent from this amendment as of January 1, 2007.

Biologically based mental illness

(R.C. 3923.281)

The act extends the requirement that group policies of sickness and accident insurance must provide coverage for the diagnosis and treatment of biologically based mental illnesses on the same terms and conditions, and with the same benefits provided, as the treatment and diagnosis of all other physical diseases and disorders covered by that policy, to include individual policies. The act also

extends the exemption of group policies from this requirement if the insurer can meet certain conditions, to include individual policies.

DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

I. General

Grant agreements

- Requires boards of county commissioners to enter into grant agreements with the Director of Job and Family Services (ODJFS), rather than permitting the boards to enter into fiscal agreements with the Director.

- Prohibits, effective July 1, 2008, the ODJFS Director from making a grant of federal financial assistance regarding family services duties (i.e., services performed by a county department of job and family services, public children services agency (PCSA), or child support enforcement agency (CSEA)) through any means other than a grant agreement, rather than permitting a board of county commissioners to select which family services duties to include in a fiscal agreement.

- Requires a county children services board and a county elected official performing the duties of a CSEA to jointly enter into a grant agreement with the board of county commissioners and ODJFS Director, rather than requiring a children services board or county elected official to jointly enter into a fiscal agreement only if the fiscal agreement includes family services duties of a PCSA or CSEA.

- Provides that ODJFS may take specified actions directly against a PCSA regarding certain problems with family services duties only if a children services board serves as the PCSA and may take such actions directly against a CSEA only if a county elected official performs the duties of the CSEA; otherwise ODJFS is to take the action against the board of county commissioners.

- Provides that ODJFS may no longer take specified actions directly against a county department of job and family services regarding certain problems with family services duties but must instead take the action against the board of county commissioners.

Individual Development Account program

- Increases income eligibility for the Individual Development Account program.

- Increases the amount fiduciary organizations may deposit into Individual Development Accounts.

Food Stamp Program Fund

- Creates the Food Stamp Program Fund.

Military Injury Relief Fund

- Authorizes incentive grants that have been authorized by the federal "Jobs for Veterans Act" to be contributed to the Military Injury Relief Fund.

- Specifies that an individual diagnosed with post-traumatic stress disorder who has served in Operation Iraqi Freedom or Operation Enduring Freedom is eligible for a grant from the Military Injury Relief Fund.

Disability Medical Assistance Program

- Permits the ODJFS Director to adopt rules that establish or specify limits on the number and types of providers eligible to be reimbursed for services provided to individuals enrolled in the Disability Medical Assistance Program.

Kinship Permanency Incentive Program

- Increases to 300% (from 200%) of the federal poverty guidelines the income eligibility limit for participation in the Kinship Permanency Incentive Program.

- Removes a special needs determination requirement for the Program and makes changes to eligibility based on custody or guardianship.

Workforce Investment

- Requires the ODJFS Director and the Director of Development jointly to prepare a plan to utilize the funds Ohio receives to administer the federal "Workforce Investment Act of 1998" to train workers within Ohio.

- Requires ODJFS to provide guidance to local workforce policy boards to encourage the broadest participation by training providers, including proprietary schools, who demonstrate effectiveness in providing training opportunities under the Workforce Investment Act of 1998.

II. Child Welfare and Adoption

- Requires ODJFS to implement and oversee the use of a Child Placement Level of Care Tool on a pilot basis and, through competitive bidding, provide for an independent evaluation of the pilot program.

- Requires ODMH to conduct a study of the children placed using the Child Placement Level of Care Tool, send a copy of the results of the study to the independent evaluator of the Child Placement Level of Care Tool, who will then send a copy of the study and evaluation to ODJFS.

- Allows ODJFS to also use a portion of the 3% of the Title IV-E funds withheld from public children services agencies for efforts supporting organizational excellence, including voluntary activities to be accredited by a nationally recognized accreditation organization.

III. Child Care and Child Support Enforcement

- Requires the ODJFS Director to adopt rules to implement a program to collect child support arrearages from insurance claims, settlements, awards, and payments.

- Specifies that any insurer providing information under the program to collect child support arrearages from insurance claims, settlements, awards, and payments is immune from any civil liability for providing that information.

- Requires ODJFS to annually claim $25 from the processing charge imposed on an obligor in certain Title IV-D child support cases, beginning not later than March 31, 2008.

- Requires the ODJFS Director to adopt rules to implement collection of the annual fee.

- Alters how a court or child support enforcement agency makes health care determinations with respect to child support orders.

- Makes conforming changes to the child support computation worksheets.

- Requires ODJFS to contract with a third party to conduct a child care market rate survey by October 1 in each even-numbered year, instead of ODJFS conducting it annually, and requires the third party to compile and report the information to ODJFS by December 1 of that year.

- Requires that rules that the ODJFS Director must adopt regarding reimbursement ceilings for providers of publicly funded child care be adopted no later than July 1 in each odd-numbered year.

- Requires ODJFS to use a portion of the funds available under the federal Child Care and Development Block Grant Act to establish a voluntary child care quality-rating program (Step Up to Quality) and requires the ODJFS Director to adopt rules to implement the program.

- Permits child day-care centers participating in Step Up to Quality to be eligible for grants, technical assistance, training, or other assistance; if the center maintains a quality rating, permits the center to be eligible for unrestricted monetary awards.

IV. Unemployment Compensation

- Eliminates the Trade Benefit Account under the Unemployment Compensation Law and requires the ODJFS Director to deposit the federal funds in that account into the Trade Act Training and Administration Account under the Unemployment Compensation Law.

- Specifies that the State Treasurer, under the direction of the ODJFS Director, may transfer funds from the Trade Act Training and Administration Account to the Unemployment Compensation Benefit Account for the purpose of making specified payments directly to claimants in accordance with specified federal acts.

V. Ohio Works First

- Requires that the maximum amount of cash assistance an assistance group may receive under the Ohio Works First (OWF) program be increased on January 1, 2009, and the first day of each January thereafter by the cost-of-living adjustment made for Social Security benefits.

- Eliminates a requirement that an OWF application include, if there are at least two telephone numbers available for contacting members of an assistance group, at least those two telephone numbers.

- Provides that the first step in determining whether an assistance group meets the income eligibility requirements for the OWF program is to determine whether the assistance group's gross income, less certain disregards, exceeds 50% of the federal poverty guidelines rather than the higher of 50% of the guidelines and the gross income maximum for initial eligibility as in effect on September 28, 2005.

- Prohibits a county department of job and family services from delaying an eligibility determination for OWF on the basis that a self-sufficiency contract has not been completed.

- Provides for an OWF sanction to last one month, three months, or six months (depending on the number of previous violations) rather than the longer of that period of time or when the violation ceases.

- Requires the ODJFS Director to establish standards for the determination of good cause for a violation of a self-sufficiency contract rather than having each county department of job and family services establish such standards.

- Eliminates a requirement that good cause for a violation regarding work requirements include specific statutorily-prescribed situations, such as a county department's failure to place an individual in an activity.

- Stipulates that a minor head of household's participation in the Learning, Earning, and Parenting (LEAP) program counts in determining whether a county department of job and family services is complying with requirements regarding work participation rates.

- Exempts a minor head of household participating in the LEAP program from the requirement to enter into a self-sufficiency contract and prohibits a self-sufficiency contract from including provisions regarding the LEAP program.

- Provides that a county department is not to appraise a minor head of household participating in the LEAP program for the purpose of work

participation activities or assign such a minor head of household to a work activity or developmental activity.

- Provides that a fugitive felon and an individual violating a condition of probation, a community control sanction, parole, or a post-release control sanction is ineligible for assistance under OWF rather than ineligible to participate in OWF.

- Requires a county department of job and family services to (1) identify assistance group members applying for or participating in OWF who have been subjected to domestic violence by utilizing a domestic violence screening process to be established in rules, (2) refer a member who has been subjected to domestic violence to counseling and supportive services, and (3) make a determination of whether a member participating in OWF should be issued a waiver that exempts the member from an OWF requirement.

VI. Medicaid

- Requires the Governor to create an administration to manage all Medicaid policies and functions and promote the efficient and effective delivery of health care, and specifies that the responsibilities of this body must include implementation of most of the recommendations of the Ohio Medicaid Administrative Study Council.

- Specifies that the requirement that the Governor create an executive Medicaid administration does not authorize the Governor to replace ODJFS as the single state agency to supervise the administration of the Medicaid program.

- Requires that at least one of the doctor members of the Pharmacy and Therapeutics Committee in ODJFS be a psychiatrist.

- Requires that a Medicaid provider agreement expire three years from its effective date, requires the adoption of rules for the use of time-limited provider agreements, and provides for the conversion of existing provider agreements that are not time-limited.

- Eliminates the five-year limit for termination of a provider agreement based on an action brought by the Attorney General.

- Authorizes the denial or termination of a provider agreement for any reason permitted or required by federal law.

- Requires the suspension of a provider agreement held by a noninstitutional health care provider based on an indictment.

- Authorizes the exclusion of an individual, provider, or entity from participation in the Medicaid program for any reason permitted or required by federal law.

- Modifies the circumstances under which ODJFS is not required to conduct an adjudication when imposing sanctions relative to a provider agreement, including sanctions imposed for failing to obtain or maintain a required certification.

- Permits ODJFS to require that Medicaid providers and provider applicants submit to criminal records checks as a condition of obtaining or retaining a provider agreement.

- Permits ODJFS to require, through a Medicaid provider, that a person submit to a criminal records check as a condition of becoming or continuing to be employed with the provider or becoming or continuing to be an owner, officer, or board member of the provider.

- Specifies the offenses that disqualify a person from being a Medicaid provider or an employee, owner, officer, or board member of a provider.

- Prohibits a Medicaid provider from employing a person who has been excluded from participation in Medicaid, Medicare, or any other federal health care program.

- Modifies the procedures used to obtain the criminal records checks required as a condition of (1) employment in a position that involves providing home and community-based services through a Medicaid waiver program to a person with disabilities and (2) receiving a Medicaid provider agreement as an independent provider of such services.

- Increases the number of disqualifying offenses, including such offenses as soliciting, identity fraud, disorderly conduct, falsification, and engaging in a pattern of corrupt activity.

- Prohibits a person from being employed or receiving a Medicaid provider agreement if the person has been found eligible for intervention in lieu of conviction for any of the disqualifying offenses.

- Would have required, effective July 1, 2009, and to the extent permitted by federal law, (1) Medicaid applications to be submitted through the Internet or by other electronic means, and (2) county departments of job and family services that accept documents related to Medicaid applications to convert such documents to an electronic format and store them electronically (VETOED).

- Requires a health care provider or medical records company to provide one free copy of a patient's medical record to a county department of job and family services.

- Eliminates the scheduled reduction (to $1) in the nursing home and hospital franchise permit fee, thereby retaining the $6.25 per bed per day fee.

- Provides for the Nursing Facility Stabilization Fund to continue to get 84% of the money generated by the nursing home and hospital franchise permit fee in fiscal year 2008 and thereafter.

- Authorizes ODJFS, when a nursing facility, hospital, or intermediate care facility for the mentally retarded (ICF/MR) fails to pay the full amount of a franchise permit fee installment when due, to offset from a Medicaid payment due the facility or hospital an amount less than or equal to the installment and a penalty assessed because of the failure, as an alternative to withholding an amount equal to the installment and penalty until the installment and penalty is paid.

- Authorizes ODJFS to both make the offset and terminate the Medicaid provider agreement of the nursing facility, hospital, or ICF/MR or take just one of those actions.

- Provides that the definition of "date of licensure" in ongoing law governing Medicaid reimbursement rates for nursing facilities and ICFs/MR applies in determinations of Medicaid rates for nursing facilities and ICFs/MR but does not apply in determining their franchise permit fees.

- Would have established statutory provisions for the appointment of the Medical Care Advisory Council, consisting of 11 members, to advise ODJFS about health and medical care services for purposes of the Medicaid program, and would have required ODJFS to permit the Council to participate in Medicaid policy development and program administration (VETOED).

- Makes changes required by the federal Deficit Reduction Act of 2005 by clarifying the specific entities that are considered "third parties" against which ODJFS can assert its right to recover the cost of medical assistance paid on behalf of public assistance recipients or participants, requiring third parties to cooperate with ODJFS and accept its right of recovery and assignment of public assistance recipients' and participants' rights, and imposing certain requirements on third parties with respect to providing ODJFS with coverage, eligibility, and claims data needed to identify liable third parties.

- In accordance with a U.S. Supreme Court holding issued in May 2006, repeals the law that specifies that the *entire amount* of a payment, settlement, or compromise of a tort action or claim against a third party is subject to ODJFS's or a county department of job and family services' right of recovery and replaces it with a provision that "any payment, settlement, or compromise of an action or claim, or any court award or judgment," is subject to the right of recovery.

- Requires disclosure of the identity of any third party against whom a public assistance recipient or participant has or may have a right of recovery to be in writing and to include the address of the third party.

- Extends the liability to reimburse ODJFS and the appropriate county department that applies when appropriate disclosure is not given to a recipient's or participant's attorney, if there is one.

- Enacts into Ohio law provisions of federal Medicaid law that prohibit a third party from taking an individual's Medicaid status into account in enrollment or payment decisions.

- Permits a governmental entity that is responsible for issuing a license, certificate of authority, registration, or approval that authorizes the third party to do business in Ohio to, in accordance with the Ohio Administrative Procedure Act, deny, revoke, or terminate the third party's

license, certificate, registration, or approval, or to impose a fine, as determined appropriate by the governmental entity, if the third party fails to comply with the requirements imposed on third parties by the act with respect to providing ODJFS with certain data or the prohibition on taking an individual's medical assistance status into account in enrollment or payment decisions.

- Establishes the Children's Health Insurance (CHIP) Part III Program, which authorizes ODJFS to request a federal waiver to provide health assistance to individuals with family incomes above 200% but not exceeding 300% of the federal poverty guidelines.

- Requires ODJFS to charge premiums for CHIP III participation.

- Requires the ODJFS Director to amend the state Medicaid plan to implement, beginning January 1, 2008, a federal option under which an individual under age 21 qualifies for Medicaid if the individual (1) was in foster care under the responsibility of the state on the individual's 18th birthday, (2) received Title IV-E foster care maintenance payments or independent living services before turning age 18, and (3) meets all other applicable eligibility requirements.

- Requires the ODJFS Director to establish the Children's Buy-In Program for individuals under age 19 who have countable income exceeding 300% of the federal poverty guidelines, have not had creditable health insurance for at least six months, and meet other eligibility requirements.

- Requires the ODJFS Director to seek federal matching funds for the Children's Buy-In Program under Medicaid or the Children's Health Insurance Program but requires the Director to implement the program with state funds only if federal matching funds are denied.

- Establishes premium requirements for the program.

- Permits the ODJFS Director to establish co-payment requirements for the program.

- Requires that the ODJFS Director submit an amendment to the state Medicaid plan to increase to 200% (from 150%) of the federal poverty guidelines the family income a pregnant woman may have and remain eligible for Medicaid.

- Specifies that the expansion of Medicaid eligibility for pregnant women is to begin not earlier than January 1, 2008.

- Eliminates the two-year limit on parents' Medicaid eligibility.

- Requires ODJFS to adopt rules establishing methods designed to provide information about the Healthcheck program.

- Requires that the ODJFS Director seek federal approval to establish the Medicaid Buy-In for Workers with Disabilities Program.

- Requires that an individual whose income exceeds 150% of the federal poverty guidelines pay an annual premium as a condition of qualifying for the program.

- Permits an individual participating in the program on the basis of being an employed individual with a medically improved disability to continue to participate for up to six months after ceasing to be employed.

- Provides that no individual is to be denied eligibility for the program due to receiving home or community-based services under a Medicaid waiver.

- Exempts an individual receiving services under a Medicaid home or community-based services waiver from paying any cost-sharing expenses otherwise applicable under the Medicaid waiver for any period during which the individual also participates in the Medicaid Buy-In for Workers with Disabilities Program.

- Provides that no individual is to have waiver component services reduced or disrupted on the basis of participating in the Medicaid Buy-In for Workers with Disabilities Program, even if the individual's income or assets increase above the limit allowed under the waiver.

- Creates the Medicaid Buy-In Advisory Council.

- Requires ODJFS to seek adjustment or recovery against certain individuals under the Medicaid Estate Recovery Program.

- Requires the person responsible for the estate of a spouse of a decedent subject to Medicaid estate recovery to submit a properly completed

Medicaid estate recovery reporting form to the administrator of the Medicaid Estate Recovery Program.

- Requires the administrator of the Medicaid Estate Recovery Program to prescribe forms for the beneficiary of a transfer on death deed, the surviving tenant under a survivorship tenancy, or the representative of such a beneficiary or surviving tenant to indicate whether the deceased owner of the real property was a decedent subject to the Medicaid Estate Recovery Program or the spouse of such a decedent and whether the real property was part of the estate of such a decedent.

- Requires a county recorder to obtain the completed form and send a copy to the administrator of the Medicaid Estate Recovery Program before recording a transfer of real property under a transfer on death deed or registering title in the surviving tenants.

- Eliminates a provision specifying the number of hours mental health services can be provided daily under Medicaid partial hospitalization provisions for community mental health facilities.

- Would have provided that a drug used for treatment of a mental illness or disorder may be subjected to a prior authorization requirement, preferred drug list, or generic substitution requirement under the Medicaid program, including its managed care components, only if the drug is a brand name drug with a generic equivalent (VETOED).

- Requires the Medicaid program to cover occupational therapy services provided by a licensed occupational therapist and permits any licensed occupational therapist to enter into a provider agreement with ODJFS.

- Requires the ODJFS Director to expand Medicaid cost-sharing requirements.

- Requires the ODJFS Director, no later than August 31, 2007, to submit a report to the General Assembly on the costs and potential three-year cost savings associated with participation in the federal Public Assistance Reporting Information System (PARIS) and, no later than October 1, 2007, to enter into any necessary agreements with the United States Department of Health and Human Services and neighboring states to join and participate as an active member in PARIS if cost savings are indicated in the report.

- Permits ODJFS to disclose information relating to public assistance participants to the extent necessary to participate in PARIS.

- Requires the ODJFS Director, no later than January 1, 2008, to submit a report to the General Assembly on the Primary Alternative Care Treatment (PACT) program and the average cost of participants before and after participation in the program.

- Requires the ODJFS Director, no later than January 1, 2009, to submit an additional report on the total cost savings achieved through PACT.

- Requires the ODJFS Director, no later than one year after the effective date of this provision of the act, to submit a report to the General Assembly on the effect of Medicare Part D and the care management system on the Supplemental Drug Rebate Program, including an evaluation of the changing price of pharmaceuticals in the supplemental program resulting from Medicare Part D and the managed care system and cost savings from increased use of generic drugs.

- Revises provisions of continuing law requiring providers of Medicaid services to provide information about the prevention and detection of fraud, waste, and abuse in federal health care programs to their employees, contractors, and agents.

- Prohibits a provision of Ohio law that incorporates a provision of federal Medicaid law, or requires state compliance with the federal provision, from being construed as creating a cause of action to enforce the Ohio law that differs from the causes of action available under the federal law.

- Repeals law establishing the Medicaid Care Management Working Group.

- Eliminates a requirement that performance-based financial incentives be implemented in Medicaid managed care contracts.

- Would have required ODJFS to use actuarially sound capitation rates, in accordance with federal law, for purposes of its Medicaid managed care contracts with health insuring corporations (HICs) (VETOED).

- Would have required ODJFS to develop a risk-adjusted rate structure for use in making payments to Medicaid managed care organizations for

serving persons in the Covered Families and Children category (VETOED).

- Would have required ODJFS, beginning not later than December 1, 2007, to provide monthly electronic reports to Medicaid managed care organizations regarding the individuals whose Medicaid eligibility is ending (VETOED).

- Requires health care providers that do not participate in Medicaid to accept the Medicaid fee-for-service payment rate for emergency services furnished to a Medicaid recipient enrolled in a Medicaid managed care organization, in the same manner that the fee-for-service payment rate applies to Medicaid-participating providers that are not under contract with the managed care organization.

- Allows a Medicaid-participating health insuring corporation to implement a pharmacy utilization management program under which a Medicaid recipient must (1) receive prior authorization to obtain a controlled substance and (2) if the person is at high risk for fraud or abuse involving controlled substances, have prescriptions for those drugs filled by a designated pharmacy, medical provider, or health care facility.

- Requires the ODJFS Director to analyze the fiscal impact that federal upper limits (FULs) affecting reimbursement rates for generic drugs, as amended by the Deficit Reduction Act of 2005 (DRA), will have on pharmacists in fiscal years 2008 and 2009.

- Notwithstanding continuing law governing dispensing fees, requires the ODJFS Director, not later than ten days after completing the fiscal impact analysis, to increase the dispensing fee paid to each pharmacist with a valid Medicaid provider agreement for dispensing a generic drug to a Medicaid recipient in fiscal year 2008 or 2009.

- Requires that the amount of the increases in the dispensing fee be determined in a manner that compensates pharmacists for the loss of revenue the ODJFS Director projects that pharmacists, on average, will incur as a result of the changes to FULs by the DRA.

- Prohibits the total amount the ODJFS Director expends to pay the increase in the dispensing fee in fiscal year 2008 or 2009 from exceeding

the total amount the Medicaid program is projected to save in those fiscal years as a result of the changes to FULs by the DRA.

- Expands eligibility for the Medicaid Assisted Living Program.

- Requires an individual admitted to a nursing facility who is eligible for Medicaid to be provided with information about applying for the Assisted Living Program.

- Prohibits the ODJFS Director from applying for a Section 1115 Medicaid waiver unless the Director provides the Speaker of the House of Representatives and President of the Senate written notice of the waiver request at least ten days before the date the Director submits the request to the federal government.

- Provides that the Director of Budget and Management, subject to Controlling Board approval, may create new funds, transfer funds among affected agencies, and take other actions in support of any home and community-based services waiver program.

- Requires the Rehabilitation Services Commission and ODJFS to work together to reduce duplication of activities performed by each agency regarding mutual clients.

- For fiscal years 2008 and 2009 only, (1) requires the ODJFS Director to pay the full cost (100%) of Medicaid cost outlier claims for inpatient admissions at children's hospitals that are less than $443,463 (adjusted annually for inflation), rather than just 85% of the cost, but (2) specifies that paying the full cost of such claims must cease and revert back to 85% of the estimated cost when the difference between the total amount the Director has paid at full cost for the outlier claims and the total amount the Director would have paid for such claims at the 85% level exceeds the sum of the state funds earmarked for the additional cost outlier payments in each fiscal year and the corresponding federal match.

- For fiscal years 2008 and 2009 only, requires the ODJFS Director to make supplemental Medicaid payments to children's hospitals for inpatient services under a program modeled after the program that ODJFS was required to create under Am. Sub. H.B. 66 of the 126th General Assembly for supplemental payments to children's hospitals when the difference between the total amount the Director has paid at full

cost for Medicaid outlier claims and the total amount the Director would have paid at the 85% level for the claims does not require the expenditure of all state and federal funds earmarked for the additional cost outlier payments in the applicable fiscal year.

- Prohibits the ODJFS Director from adopting, amending, or rescinding any rules that would result in decreasing the amount paid to children's hospitals for cost outlier claims.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal year 2008 by (1) increasing the cost per case mix-unit, rate for ancillary and support costs, rate for capital costs, and rate for tax costs as calculated under the formula by 2%, then by another 2%, and then by 1%, (2) increasing the mean payment used in the calculation of the quality incentive payment to $3.03 per Medicaid day, (3) limiting the total rate to not more than 102.75% and not less than 100% of a nursing facility's fiscal year 2007 total rate, and (4) reducing, if the federal government requires that the nursing facility franchise permit fee be reduced or eliminated, the payments as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Adjusts the formula used to calculate nursing facilities' Medicaid reimbursement rates for fiscal year 2009 by (1) increasing the cost per case mix-unit, rate for ancillary and support costs, rate for capital costs, and rate for tax costs as calculated under the formula by 2%, then by another 2%, then by 1%, (2) increasing the mean payment used in the calculation of the quality incentive payment to $3.03 per Medicaid day, (3) limiting the total rate to not more than 102.75% and not less than 100% of a nursing facility's fiscal year 2007 total rate, and (4) reducing, if the federal government requires that the nursing facility franchise permit fee be reduced or eliminated, the payments as necessary to reflect the loss of revenue and federal financial participation generated by the fee.

- Provides for qualifying nursing facilities to receive additional quarterly payments during fiscal years 2008 and 2009.

- Provides that nursing facilities that qualify for the payments are (1) certain nursing facilities that are new as of fiscal year 2006, 2007, or 2008, (2) certain nursing facilities that completed a capital project before

June 30, 2008, (3) certain nursing facilities that completed an activity for which a certificate of need is not needed before June 20, 2008, and (4) certain nursing facilities that completed a renovation before June 30, 2008.

- Creates formulas to be used to determine the amount of the payments.

- Terminates all nursing facilities' eligibility for the payments at the earlier of July 1, 2009, or the date the total amount of the payments equals $7 million.

- Adds offsite day programming to the costs included in the direct care costs of intermediate care facilities for the mentally retarded (ICFs/MR) for the purpose of Medicaid reimbursement.

- Requires ODJFS to reduce the fiscal year 2008 Medicaid rates for ICFs/MR if the mean total per diem rate for all ICFs/MR weighted by May 2007 Medicaid days and calculated as of July 1, 2007, exceeds $266.14.

- Requires ODJFS to reduce the fiscal year 2009 Medicaid rates for ICFs/MR if the mean total per diem rate for all ICFs/MR weighted by May 2008 Medicaid days and calculated as of July 1, 2008, exceeds $271.46.

- Prohibits, for the remainder of a fiscal year, further adjustments otherwise authorized by law governing Medicaid payments to ICFs/MR following a reduction in the Medicaid rates for ICFs/MR.

- Increases the Medicaid reimbursement rates for PASSPORT and Choices services provided during fiscal year 2008 by 3% and the reimbursement rate for PASSPORT and Choices services provided during fiscal year 2009 by another 3%.

- Requires the Medicaid Program to cover chiropractic services for adult Medicaid recipients for the period January 1, 2008, to June 30, 2009.

VII. Hospital Care Assurance Program

- Delays the termination of the Hospital Care Assurance Program to October 16, 2009.

I. General

Grant agreements

(R.C. 307.98, 307.981, 329.04, 329.05, 3125.12, 5101.162, 5101.21, 5101.211, 5101.212, 5101.213, 5101.24, 5101.242, and 5101.244)

Prior law permitted the Director of Job and Family Services (ODJFS) to enter into one or more written fiscal agreements with a board of county commissioners under which financial assistance was awarded for duties of a county family services agency (county department of job and family services (CDJFS), child support enforcement agency (CSEA), or public children services agency (PCSA)) included in the agreements. The board of county commissioners was to select which, if any, duties of county family services agencies were to be included in a fiscal agreement.

If a board of county commissioners did not enter into a fiscal agreement with the Director, ODJFS was to award to the county the board serves financial assistance for the county family services agencies' duties in accordance with a methodology for determining the amount of the award the Director established in rules.

The act replaces fiscal agreements with grant agreements. Boards of county commissioners are required, rather than permitted, to enter into one or more written grant agreements with the Director. If a county's PCSA is a children services board, the children services board must jointly enter into the grant agreement with the Director and board of county commissioners. If a county elected official performs the duties of a CSEA, the elected official must also jointly enter into the grant agreement.

The initial grant agreement must be entered into not later than January 21, 2008, and be in effect for fiscal year 2009. Except as provided in rules the Director is to adopt,[83] subsequent grant agreements must be entered into before the first day of each successive biennial period (a period of time that begins on the first day of July of an odd-numbered year and ends on the last day of June of the next odd-numbered year). A subsequent grant agreement is to be in effect for the fiscal biennial period for which it is entered, unless it is entered into after the start of the fiscal biennial period. Even if a grant agreement is entered into after the start of a fiscal biennial period, however, the Director is permitted to provide for the agreement to have a retroactive effective date of the first day of July of an odd-

[83] The ODJFS Director must adopt rules establishing terms and conditions under which a grant agreement may be entered into after the first day of a fiscal biennial period.

numbered year if (1) the agreement is entered into before the last day of that July and (2) the board of county commissioners requests the retroactive effective date and provides the Director good cause satisfactory to the Director that the agreement was not entered into on or before the first day of that July.

The alternative system in prior law for ODJFS awarding financial assistance for county family services agencies' duties in accordance with a methodology established in rules may not be used after July 1, 2008. On and after that date, the Director is prohibited from awarding grants to counties through any means other than a grant agreement.

The act defines "grant" as an award for one or more family services duties (the duties of county family services agencies) of federal financial assistance that a federal agency provides in the form of money, or property in lieu of money, to ODJFS and that ODJFS awards to a county grantee. State funds ODJFS awards to a county grantee to match the federal financial assistance may be included in a grant. But, neither of the following are to be considered a grant: technical assistance that provides services instead of money and other assistance provided in the form of revenue sharing, loans, loan guarantees, interest subsidies, or insurance. A county grantee is a board of county commissioners, a county children services board, or a county elected official who performs the duties of a CSEA.

The act requires that a grant agreement comply with all of the conditions, requirements, and restrictions applicable to the family services duties for which the grants included in the agreement are awarded, including the conditions, requirements, and restrictions established by ODJFS, federal or state law, state plans for receipt of federal financial participation, agreements between ODJFS and a federal agency, and executive orders issued by the Governor. A grant agreement must establish terms and conditions governing the accountability for and use of the grants included in the agreement and ensure that any matching funds, regardless of the source, that the county grantee manages are clearly identified and used in accordance with federal and state laws and the agreement. A grant agreement must include a requirement for the county grantees to do all of the following with regard to a subgrant of any grant included in the agreement that a county grantee awards to another entity: (1) award the subgrant through a written subgrant agreement that requires the entity awarded the subgrant to comply with all conditions, requirements, and restrictions applicable to the county grantee regarding the grant, (2) monitor the entity to ensure that it uses the subgrant in accordance with conditions, requirements, and restrictions applicable to the family services duties for which the subgrant is awarded, and (3) take action to recover subgrants that are not used in accordance with the applicable conditions, requirements, and restrictions.

Prior law governing fiscal agreements permitted ODJFS to provide financial assistance awarded under an agreement in the form of an allocation, cash draw, reimbursement, property, or, to the extent authorized by an appropriation made by the General Assembly and to the extent practicable and not in conflict with federal or state law, a consolidated funding allocation for two or more family services duties included in the agreement. The act permits ODJFS to provide a grant included in a grant agreement in the form of a cash draw, reimbursement, property, advance, working capital advance, or other form specified in rules the Director is to adopt.

The act makes applicable to grant agreements certain provisions that applied to fiscal agreements. For example, a grant agreement must (1) provide for ODJFS to award the grants included in the agreement in accordance with a methodology for determining the amount of the award established in rules the Director is to adopt, (2) specify annual financial, administrative, or other awards, if any, to be provided to county family services agencies, and (3) provide that the grants are subject to the availability of federal funds and appropriations made by the General Assembly.

The act provides that a grant agreement does not have to be amended for a county grantee to be required to comply with a new or amended condition, requirement, or restriction for a family services duty established by federal or state law, state plan for receipt of federal financial participation, agreement between ODJFS and a federal agency, or executive order issued by the Governor.

As under prior law governing fiscal agreements, the Director is required to adopt rules governing grant agreements. The rules may govern the award of grants included in grant agreements. Also as under prior law governing fiscal agreements, a requirement of a grant agreement established by a rule adopted by the Director is applicable to a grant agreement without having to be restated in the grant agreement. The act expressly provides that a requirement established by a grant agreement is applicable to the grant agreement without having to be restated in a rule.

The act provides that if ODJFS determines that a grant awarded to a county grantee in a grant agreement, an allocation, advance, or reimbursement ODJFS makes to a county family services agency, or a cash draw a county family services agency makes exceeds the allowable amount, ODJFS may adjust, offset, withhold, or reduce an allocation, cash draw, advance, reimbursement, or other financial assistance to the county grantee or county family services agency as necessary to recover the excess amount.

Action against a county regarding family services duties

(R.C. 5101.24, 5101.242, and 5111.10)

ODJFS is authorized by continuing law modified by the act to take certain actions against a board of county commissioners or a county family services agency, whichever ODJFS determines is appropriate to take action against, if ODJFS determines certain problems regarding a family services duty exist. ODJFS may take action if it determines any of the following are the case:

- A requirement of a fiscal agreement that includes the family services duty is not complied with.

- A county family services agency fails to develop, submit to ODJFS, or comply with a corrective action plan or ODJFS disapproves the corrective action plan.

- A requirement for the family services duty established by ODJFS, federal or state law, state plan for receipt of federal financial participation, agreement between ODJFS and a federal agency, or executive order issued by the Governor is not complied with.

- The board of county commissioners or county family services agency, whichever ODJFS determines is responsible, is solely or partially responsible for an adverse audit finding, adverse quality control finding, final disallowance of federal financial participation, or other sanction or penalty regarding the family services duty.

The actions ODJFS may take including requiring the responsible entity to comply with a corrective action plan, requiring the responsible entity to share with ODJFS a final disallowance of federal financial participation, imposing an administrative sanction, and performing, contracting with another entity to perform, the family services duty until ODJFS is satisfied that the responsible entity ensures that the duty will be performed satisfactorily. ODJFS may also request that the Attorney General bring mandamus proceedings to compel the responsible entity to take or cease the action that leads ODJFS to take action.[84]

The act provides that ODJFS may take action against whichever county grantee it determines is appropriate to take the action against. This means that ODJFS may still take action against a board of county commissioners but may take action against a public children services agency only if a county children

[84] Mandamus is an action seeking a court order requiring a public entity or official to act (or cease acting) in accordance with the order.

services board serves as the PCSA and may take action against a CSEA only if a county elected official performs the duties of the CSEA. Otherwise, ODJFS must take the action against the board of county commissioners rather than the PCSA or CSEA. ODJFS must take the action against the board of county commissioners rather than the CDJFS. Before taking action regarding a family services duty, however, ODJFS must notify the director of the appropriate county family services agency, even if ODJFS must take the action against the board of county commissioners rather than the county family services agency.

Continuing law permits ODJFS to conduct reviews of the Medicaid program. If it determines pursuant to a review that a person or government entity has violated a rule governing the Medicaid program, ODJFS may establish a corrective action plan for the violator and impose fiscal, administrative, or both types of sanctions on the violator in accordance with rules governing the Medicaid program. The act eliminates a provision of prior law providing that such action to be taken against a board of county commissioners or CDJFS was to be taken in accordance with state law governing the actions that ODJFS may take regarding a family services duty against a board of county commissioners or county family services agency.

Individual Development Account program

(R.C. 329.14)

Continuing law modified in part by the act permits a CDJFS to establish an individual development account (IDA) program for residents of the county whose household income does not exceed 150% of the federal poverty guidelines. A CDJFS that chooses to establish a program is required to select a nonprofit fundraising organization exempt from federal income taxation ("fiduciary organization") to administer the program.

Under a program, the fiduciary organization may deposit into a trust created or organized in the United States an amount not exceeding twice the amount of earned income the program participant deposits into the account, provided the account does not have more than $10,000 in it at any time. A fiduciary organization may establish an IDA only in a financial institution insured by the Federal Deposit Insurance Corporation or by an insurer qualified under Ohio law to write insurance for a credit union.

An individual for whom an IDA is established may use the money in the account only for the following purposes and only with the approval of the fiduciary organization:

(1) Eligible postsecondary educational expenses paid directly from the account to an eligible educational institution or vendor.

(2) Qualified acquisition costs of a principal residence paid directly from the account to the person or government entity to which the expenses are due.

(3) Qualified business capitalization expenses made in accordance with a qualified business plan that has been approved by a financial institution or by a nonprofit microenterprise program having demonstrated business expertise and paid directly from the account to the person to whom the expenses are due.

(4) Personal emergencies of the participant or a member of the participant's family or household. Withdrawal of money from an IDA for this purpose results in the loss of matching funds in the amount of the withdrawal.

The act increases income eligibility for participation in the program to 200% of the federal poverty guidelines (from 150%).[85] The act also increases the amount a fiduciary organization may deposit into the account to four times the amount the program participant deposits into the account. The prior limit was two times that amount.

Food Stamp Program Fund

(R.C. 5101.541)

The act creates the Food Stamp Program Fund consisting of federal reimbursement for food stamp program administrative expenses and other food stamp program expenses. ODJFS must use the money credited to the fund to pay for food stamp program administrative expenses and other food stamp program expenses.

Military Injury Relief Fund

(R.C. 5101.98; Section 309.70.10)

Under continuing law, the Military Injury Relief Fund consists of contributions made directly to it and money designated by taxpayers who have elected to donate a portion of their income tax return to the Fund. The ODJFS Director grants money in the Fund to individuals injured while in active service as a member of the armed forces of the United States while serving under Operation Iraqi Freedom or Operation Enduring Freedom. The act authorizes incentive

[85] The 2007 federal poverty guideline for a family of four is an annual income of $20,650 (http://aspe.hhs.gov/poverty/07povertylevel.shtml, last visited July 11, 2007).

grants that have been authorized by the "Jobs for Veterans Act," 116 Stat. 2033 (2002), to also be contributed to the Fund. Also, the act specifies that an individual diagnosed with post-traumatic stress disorder, who has served in Operation Iraqi Freedom or Operation Enduring Freedom, is eligible for a grant from the Fund. The act prohibits a person from appealing under the Administrative Procedure Act (R.C. Chapter 119.) or R.C. 5101.35 any grant decision made by the Director, and instead authorizes the Director to adopt rules establishing the process for appealing eligibility determinations for these grants.

Disability Medical Assistance Program

Background

(R.C. 5115.10 through 5115.14 (not all in the act))

ODJFS operates the Disability Medical Assistance Program. To be eligible for the Program, a person must be "medication dependent"[86] and ineligible for any category of Medicaid, and meet other requirements. A person eligible for the Program may receive "covered services."[87]

Rulemaking authority

(R.C. 5115.12)

Under continuing law, the ODJFS Director must adopt rules governing the Disability Medical Assistance Program. The Director is permitted, but not required, to adopt rules that establish or specify any or all of the following:

(1) Income, resource, citizenship, age, residence, living arrangement, and other eligibility requirements;

(2) Health services to be included in the Program;

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[86] 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.

[87] "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. O.A.C. 5101:3-23-01(B).

(3) The maximum authorized amount, scope, duration, or limit of payment for services;

(4) Limits on the length of time an individual may receive disability medical assistance;

(5) Limits on the total number of individuals in the state who may receive disability medical assistance.

The act permits the Director to also adopt rules that establish or specify limits on the number and types of providers who are eligible to be reimbursed for services provided to individuals enrolled in the Program.

Kinship Permanency Incentive Program

Background

The main operating budget of the 126th General Assembly (Am. Sub. H.B. 66) created the Kinship Permanency Incentive Program. Under the Program, an initial one-time incentive payment is to be given to a kinship caregiver[88] to defray the costs of initial placement of a minor child in the kinship caregiver's home. Additional assistance may be provided for no longer than 36 months.

To be eligible to participate in the program, law retained in part by the act required that all of the following requirements be met:

(1) The child the kinship caregiver is caring for is a child with special needs as determined under existing ODJFS rules;

(2) 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 a probate court has determined that it is in the child's best interest to be in the guardianship of the kinship caregiver;

(3) The kinship caregiver is either the child's legal custodian or legal guardian;

[88] A kinship caregiver is a person 18 years of age or older who is 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 of any of the above, and the legal guardian or custodian of the child (R.C. 5101.85).

(4) The child resides with the kinship caregiver pursuant to a placement approval process to be established by ODJFS in rules;

(5) 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.[89]

The act

(R.C. 5101.802)

The act changes the program's eligibility requirements. It eliminates the requirement that the child be a child with special needs and raises the maximum income eligibility of a participant to 300% of the federal poverty guidelines. The ODJFS Director must adopt rules to determine income calculation. The act eliminates a requirement that the Director adopt other rules necessary to implement the program.

The act changes the custody requirement so that, on or after July 1, 2005, a juvenile court must have issued an order of legal custody to the kinship caregiver, or a probate court must have granted guardianship to the kinship caregiver. The act eliminates the requirement that a juvenile court have determined the child abused, neglected, dependent, or unruly, or a probate court to have determined that it is in the best interest of the child to be in the guardianship. The act provides that a temporary court order is not sufficient to fulfill the custody requirement.

The act maintains the requirements that the kinship caregiver reside with the child and be the child's legal custodian or legal guardian. Those participating in the program as of the act's effective date are not made ineligible by the changes made by the act.

ODJFS reports

The act 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

[89] The 2007 poverty guideline for a family of four is an annual income of $20,650. (http://aspe.hhs.gov/poverty/07poverty/shtml, last visited July 11, 2007.)

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.

Plan to utilize funds received to administer the federal Workforce Investment Act

(Section 751.10)

Continuing law requires the ODJFS Director to administer the federal "Workforce Investment Act of 1998," 112 Stat. 936, 29 U.S.C. 11 2801, as amended, pursuant to Ohio's Workforce Development System Law (R.C. Chapter 6301.; R.C. 6301.02). The Director of Development also administers programs concerning workforce development. The act requires the ODJFS Director and the Director of Development jointly to prepare a plan to utilize the funds Ohio receives to administer the federal "Workforce Investment Act of 1998," 112 Stat. 936, 29 U.S.C. 11 2801, as amended, to train workers within Ohio. The Directors jointly must submit that plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives within one year after the effective date of this provision.

Proprietary schools and workforce development

(Section 751.20)

For the purposes of administering the federal Workforce Investment Act of 1998, the state is divided into local areas to provide various training and other employment related services to persons at the local level. Each of these local areas has a workforce policy board that prepares a workforce development plan for the area for which a board is responsible (R.C. 6301.07). The act requires ODJFS to provide guidance to local workforce policy boards to encourage the broadest participation by training providers, including those providers who are proprietary schools, who demonstrate effectiveness in providing training opportunities to eligible Ohioans under the Workforce Investment Act of 1998.

II. Child Welfare and Adoption

Child placement level of care tool pilot program

(Section 309.50.60)

Development

Contingent upon the availability of funding, the act requires ODJFS to implement and oversee the use of a Child Placement Level of Care Tool on a pilot basis. The Tool will be used to assess a child's placement needs when a child must be removed from the child's own home and cannot be placed with a relative or kin not certified as a foster caregiver and must include assessing a child's behavior, history, psychological state, and the involvement of service systems. This Tool must be developed by the participating counties and implemented by ODJFS. The participating counties will include Cuyahoga County and up to nine additional counties selected by ODJFS. Participation in this pilot program will be voluntary; a selected county must agree to participate. ODJFS may adopt administrative rules to carry out the pilot program and must seek maximum federal financial participation to support the pilot program and its evaluation. The pilot program will conducted between July 1, 2008, and December 31, 2009. The length of the program does not include time expended in preparation for implementation or in post-program evaluation.

Evaluation

Through the competitive selection process, ODJFS must provide for an independent evaluation of the pilot program to rate the following: placement stability, length of stay, and other outcomes for children; cost; worker satisfaction; and any other criteria that ODJFS determines will be useful in the consideration of statewide implementation. The evaluation design must include a comparison of data to historical outcomes or control counties, a retrospective data review of Cuyahoga County's use of the Tool, and a prospective data evaluation in each of the pilot counties.

Coordination with the Ohio Department of Mental Health

The Ohio Department of Mental Health (ODMH) must conduct a study of the children placed using the Child Placement Level of Care Tool, which must run concurrent with ODJFS Child Placement Level of Care Tool pilot program. This study must use both the Tool and the Ohio Scales Tool (the Ohio Youth Problems, Functioning, ROLES, and Marker Scales (Ohio Scales, Worker Form) used by ODMH to measure outcomes for youth ages five to 18) in a simultaneous collection of information about children at the time a placement decision is made.

The simultaneous data collection must be coordinated through collaboration between ODMH and the independent evaluator of the Child Placement Level of Care Tool to ensure study design integrity and cost efficiency.

Based on this data collection, the study must focus on analyzing any correlations between the initial placement outcomes and initial scores of problem severity and behavioral health functioning. Through a data sharing agreement with the independent evaluator, ODMH must also analyze data from subsequent administrations of the Ohio Scales Tool and changes in placement level of care for any correlations.

Upon completion of the study, ODMH must send a copy of the results of the study to the independent evaluator of the Child Placement Level of Care Tool. The independent evaluator must send a copy of the evaluator's initial evaluation of the Child Placement Level of Care Tool, the ODMH calibration study, and the continuity of care analysis to ODJFS.

Efforts supporting organizational excellence

(R.C. 5101.141)

Under continuing law, ODJFS must distribute to public children services agencies that incur and report expenditures of county funds involving certain foster care maintenance or Title IV-E adoption assistance payments, Title IV-E funds received for administrative and training costs incurred in the operation of foster care maintenance and adoption assistance programs. ODJFS may withhold up to 3% of the Title IV-E funds. Under prior law, the funds withheld could be used only to fund the Ohio Child Welfare Training Program and the University Partnership Program for college and university students majoring in social work who have committed to work for a public children services agency upon graduation. (The funds withheld are in addition to any administration and training cost for which ODJFS is reimbursed through its own cost allocation plan.)

The act allows ODJFS to also use a portion of the 3% of the Title IV-E funds for efforts supporting organizational excellence, including voluntary activities to be accredited by a national recognized accreditation organization.

III. Child Care and Child Support Enforcement

Collection of child support arrearages from insurance claims and payments

(R.C. 3123.23)

Under continuing law, a court or child support enforcement agency that issued or modified a child support order is required to take specified actions if the

person obligated to pay child support falls into arrears in making payments. For example, the court or agency may order the arrearage to be deducted from that person's wages or order a financial institution to deduct the support amount from amounts the person has on deposit at that institution. The act retains each of these processes for collecting the arrearage and creates a new process for collecting the arrearage from insurance claims and payments.

The act requires the ODJFS Director to adopt rules under the Administrative Procedure Act to implement a program to collect child support arrearages owed under child support orders from insurance claims, settlements, awards, and payments based on information obtained under the child support enforcement provisions of the Social Security Act. Any insurer and any director, agent, or employee authorized to act on behalf of an insurer, that releases information or makes a disclosure in accordance with those rules will be immune from liability in a civil action for harm resulting from the disclosure.

Processing charge claim for certain Title IV-D child support cases

(R.C. 3119.27)

Under continuing law, the court or a CSEA, when issuing or modifying a child support order, must charge an obligor a processing charge that is the greater of either (1) 2% of the support payment to be collected under the child support order, or (2) $1 per month.

The act, in accordance with the Deficit Reduction Act of 2005 (P.L. 109-171), requires ODJFS to annually claim $25 from the processing charge, for federal reporting purposes, in all Title IV-D child support cases wherein (1) the obligee has never received Title IV-A (TANF) assistance,[90] and (2) ODJFS has collected at least $500 of child support for the obligee. The ODJFS Director must adopt rules in accordance with the Administrative Procedure Act to implement the annual fee, and the act requires this provision to be implemented no later than March 31, 2008.

[90] The "obligee" is the person to whom child support is paid (R.C. 3119.01(B)).

Health insurance coverage for children who are the subject of a child support order

(R.C. 3119.022, 3119.023, 3119.05, 3119.29, 3119.30, 3119.302, and 3119.32; Section 803.03)

Continuing law partially changed by the act

Whenever a court or CSEA either issues or modifies a child support order, the court or CSEA must determine which party subject of the child support proceeding is responsible for the health care of the children subject of the order and include such information in the order. The parties must provide the court or CSEA with a list of any group health insurance policies, contracts, or plans available to the parties, and once the court or CSEA reviews the information provided, the court or CSEA must require one of the following:

(1) The obligor[91] provide health insurance coverage if available at a reasonable cost through the obligor's employer or through another plan that is available at a more reasonable cost than a plan available to the obligee;

(2) The obligee provide health insurance coverage if available through the obligee's employer or through another plan available to the obligee and is available at a more reasonable cost than coverage is available to the obligor;

(3) The obligor and obligee share liability for health insurance coverage if coverage is not available at a reasonable cost to the obligor or obligee, pursuant to a formula created by the court or CSEA, and that the obligor or obligee notify the court or CSEA if health insurance becomes available at a reasonable cost after the child support order is issued or modified;

(4) The obligor and obligee both obtain health insurance coverage if coverage is available at a reasonable cost to both parties and there is no unnecessary duplication of coverage.

The cost of the provision of health insurance is included in the child support computation worksheets (as an income adjustment) when the court or CSEA determines the final actual amount of child support to be paid.

Former law prohibited a court from ordering an amount of child support for reasonable and ordinary medical or dental expenses in addition to the amount of the child support obligation determined in accordance with the child support schedule.

[91] The "obligor" is the person responsible for paying child support (R.C. 3119.01(B)).

The act

Generally, the act changes how a court or CSEA makes health care determinations with respect to child support orders.

Definitions. Under the act:

- "Health care" means such medical support that includes coverage under a health insurance plan, payment of costs of premiums, co-payments, and deductibles, or payment for medical expenses incurred on behalf of the child.

- "Health insurance coverage" means accessible private health insurance that provides primary care services within 30 miles from the residence of the child subject to the child support order. However, the court or CSEA may allow private health insurance to be farther than 30 miles if residents in part or all of the immediate geographic area customarily travel farther distances or if primary care services are accessible only by public transportation; this determination must be included in the child support order.

- "Reasonable cost" means the contributing cost of private family health insurance that does not exceed an amount equal to 5% of the annual gross income of the person responsible for the health care of the children subject to the child support order. However, if the U.S. Secretary of Health and Human Services issues a regulation defining "reasonable cost" or a similar term or phrase relevant to the provisions in child support orders relating to the provision of health care for children subject to the orders, and if that definition is substantively different from the meaning of "reasonable cost" described in the preceding sentence, "reasonable cost" will have the meaning as defined by the U.S. Secretary of Health and Human Services.

Health care determinations. The act specifies that all child support orders must include provisions for the health care of the children in the child support order. The order must specify that the obligor and obligee are both liable for the health care of the children who are not covered by private health insurance or cash medical support as calculated in accordance with the child support computation worksheets. The act removes a provision that prohibited a court, in a court child support order, from ordering an amount of child support for reasonable and ordinary uninsured medical or dental expenses in addition to the amount of the child support obligation determined in accordance with the child support schedule. The act also requires each child support order to contain a statement that, upon receipt of notice by the child support enforcement agency that private health

insurance coverage is not available at a reasonable cost, cash medical support must be paid in the amount as determined by the child support computation worksheets, and the child support enforcement agency may change the financial obligations of the parties to pay child support and cash medical support in accordance with the terms of the court or administrative order without a hearing or additional notice to the parties.

Under the act, when a court or CSEA issues or modifies a child support order and includes provisions for health insurance coverage, the order must stipulate that the coverage is through *private* health insurance.

The act also replaces the provision that requires the obligor and obligee to share liability for health insurance coverage if coverage is not available at a reasonable cost to the obligor or obligee (#3 above) with a provision that requires the obligor or the obligee to immediately inform the child support enforcement agency that private health insurance coverage for the children has become available to either the obligor or obligee, if health insurance coverage for the children is not available at a reasonable cost to the obligor or the obligee at the time the court or CSEA issues the order. The CSEA must determine if the private health insurance coverage is available at a reasonable cost, and, if reasonable coverage is available, then the obligor or obligee must obtain the private health insurance coverage, as applicable. The CSEA must give the obligor notice and provide the obligor an opportunity to be heard if the obligor believes there is a mistake of fact regarding the availability of private health insurance at a reasonable cost as determined by the CSEA.

Considerations when making a health care determination. When the court or the CSEA determines the person or persons responsible for the health care of the children subject to the child support order, all of the following apply:

(1) The court or CSEA must consider any private health insurance in which the obligor, obligee, or children, are enrolled at the time the court or CSEA issues the order.

(2) If the contributing cost of private family health insurance to either parent exceeds 5% of that parent's annual gross income, that parent cannot be ordered to provide private health insurance for the child except when (a) both parents agree that one, or both, of the parents obtain or maintain the private health insurance that exceeds 5% of the annual gross income of the parent obtaining or maintaining the private health insurance, (b) either parent requests to obtain or maintain the private health insurance that exceeds 5% of that parent's annual gross income, or (c) the court determines that it is in the best interest of the children for a parent to obtain and maintain private health insurance that exceeds 5% of that parent's annual gross income and the cost will not impose an undue financial

burden on either parent. If the court makes such a determination, the court must include the facts and circumstances of the determination in the child support order.

(3) If private health insurance is available at a reasonable cost to either parent through a group policy, contract, or plan, and the court determines that it is not in the best interest of the children to utilize the available private health insurance, the court must state the facts and circumstances of the determination in the child support order. The court determination does not limit any obligation to provide cash medical support.

Cash medical support. When a child support order is issued or modified, and the obligor's gross income is 150% or more of the federal poverty level for an individual, the order must include the amount of cash medical support to be paid by the obligor that is either 5% of the obligor's adjusted gross income or the obligor's share of the United States Department of Agriculture estimated annual health care expenditure per child as determined in accordance with federal law and regulation, whichever is the lower amount. The amount of cash medical support paid by the obligor must be paid during any period after the court or CSEA issues or modifies the order in which the children are not covered by private health insurance. Any cash medical support must be paid by the obligor to either the obligee if the children are not Medicaid recipients, or to the Office of Child Support to defray the cost of Medicaid expenditures if the children are Medicaid recipients. The CSEA administering the court or administrative order must amend the amount of monthly child support obligation in accordance with the terms of the support order calculated in the current order pursuant to the child support computation worksheets.

The obligor must begin payment of any cash medical support on the first day of the month immediately following the month in which private health insurance coverage is unavailable or terminates and cease payment on the last day of the month immediately preceding the month in which private health insurance coverage begins or resumes. During the period when cash medical support is required to be paid, the obligor or obligee must immediately inform the CSEA that health insurance coverage for the children has become available.

The ODJFS Director must create and annually update a table to be used to determine the amount of cash medical support to be paid. The table must incorporate potential combined gross incomes of the parties, in a manner determined by the Director, and the United States Department of Agriculture estimated annual health care expenditure per child as determined in accordance with federal law and regulation.

Miscellaneous. The act makes conforming changes to the child support computation worksheets regarding the provision of health care. Also, the changes

made to the preceding health care provisions take effect on February 1, 2008, or on the effective date of regulations defining "reasonable cost" issued by the U.S. Secretary of Health and Human Services, whichever is later.

Market rate survey and reimbursement ceiling for publicly funded child care

(R.C. 5104.04 and 5104.30)

Continuing law requires ODJFS to, at least once during every 12-month period of operation of a child day-care center or type A home, collect information concerning the amounts charged by the center or home for providing child care services for use in establishing reimbursement ceilings and payment for providers of publicly funded child care (child care market rate survey), which are established pursuant to the adoption of rules by the ODJFS Director.

The act requires ODJFS to contract with a third party to conduct the child care market rate survey by October 1 in each even-numbered year, instead of ODJFS conducting it annually. The child care market rate survey information must be compiled and reported to ODJFS by December 1 of that year. Lastly, the act requires that the rules that the Director must adopt regarding reimbursement ceilings for providers of publicly funded child care, be adopted no later than July 1 in each odd-numbered year.

Voluntary child care quality-rating program (Step Up to Quality)

(R.C. 5104.30)

Continuing law designates ODJFS as the entity that distributes the federal funds available under the Child Care Block Grant Act. ODJFS is required to allocate and use at least 4% of these funds for specific activities.

The act adds that ODJFS must use a portion of these funds to establish a voluntary child day-care center quality-rating program (the Step Up to Quality program[92]) and requires the Director of ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement Step Up to Quality. If a child day-care center participates in Step Up to Quality, that center may be eligible for grants, technical assistance, training, or other assistance. Additionally, if the center maintains a quality rating, that center may be eligible for unrestricted monetary awards.

[92] http://jfs.ohio.gov/cdc/docs/GuidanceDoc.pdf.

IV. Unemployment Compensation

Elimination of the Trade Act Benefit Account under the Unemployment Compensation Law

(R.C. 4141.09)

The act eliminates the Trade Benefit Account. Under former law, the Treasurer of State, under the ODJFS Director's direction, had to deposit into that account federal funds that the Director received for the payment of benefits, job search, relocation, transportation, and subsistence allowances pursuant to the "Trade Act of 1974," 19 U.S.C.A. 2101, as amended; the "North American Free Trade Implementation Act of 1993," 19 U.S.C.A. 3301, as amended; and the "Trade Act of 2002," 19 U.S.C.A. 3801, as amended. Former law specified that the Trade Benefit Account was created for the purpose of making payments under those federal acts.

The act instead requires the Director to deposit the funds the Director receives for the payment of benefits, job search, relocation, transportation, and subsistence allowances pursuant to those federal acts into the Trade Act Training and Administration Account. Under continuing law, the Treasurer of State, under the Director's direction, must deposit federal funds received by the Director for *training and administration* pursuant to those federal acts into the Trade Act Training and Administration Account. Continuing law specifies that the Trade Act Training and Administration Account is created for the purpose of making payments specified under those federal acts. The act allows the Treasurer of State, under the direction of the Director, to transfer funds from the Trade Act Training and Administration Account to the Unemployment Compensation Benefit Account in the Unemployment Compensation Fund for the purpose of making any payments directly to claimants for benefits, job search, relocation, transportation, and subsistence allowances, as specified by those federal acts.

V. Ohio Works First

Background

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.

Ohio Works First (OWF) is one of Ohio's programs that is funded in part with federal TANF funds. Participants of OWF receive TANF-funded assistance and are therefore subject to the federal TANF requirements applicable to assistance such as time limits and work requirements.

Ohio Works First cash assistance payments

(R.C. 5107.03, 5107.04, and 5107.05)

Continuing law requires the ODJFS Director to adopt rules establishing the method of determining the amount of cash assistance an assistance group receives under OWF. The maximum amount of cash assistance paid for with state and federal funds cannot exceed the payment standard, which is also established in rules.

The act requires ODJFS to increase the payment standard on January 1, 2009, and the first day of each January thereafter by the cost-of-living adjustment the United States Commissioner of Social Security makes for benefits provided under Title II of the Social Security Act (Social Security retirement benefits) in the immediately preceding December. Increasing the payment standard increases the maximum amount of cash assistance funded with state and federal funds that an assistance group may receive under OWF. The act maintains continuing law

permitting a CDJFS to use county funds to increase the amount of cash assistance an assistance group receives under OWF.

Ohio Works First applications

(R.C. 5107.05)

The ODJFS Director is required to adopt rules establishing application and verification procedures for OWF, including the minimum information an application must contain. Prior law required that, if there were at least two telephone numbers available that a county department could call to contact members of an assistance group, which may have included the telephone number of an individual who could contact the assistance group for the county department, the minimum information must have included at least those two telephone numbers. The act eliminates the requirement that the application include the two telephone numbers when available.

Income eligibility limit

(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.

Am. Sub. H.B. 66 of the 126th General Assembly, the biennial budget act, modified the first step. That act eliminated specific dollar amounts that an assistance group's gross income, less disregards, could not exceed for the assistance group to meet the first step of the income eligibility requirement. For example, prior law specified that an assistance group with three members could not have gross monthly income, less amounts disregarded, exceeding $630.

In place of the specific dollar amounts, H.B. 66 provides that an assistance group's gross income, less amounts disregarded, cannot exceed the higher of (1) 50% of the federal poverty guidelines or (2) the dollar amount specified in the prior state law.

The act further modifies the first step in the income eligibility requirement by providing that an assistance group's income, less disregards, cannot exceed 50% of the federal poverty guidelines rather than the higher of that amount or the dollar amount specified in prior law. Because of increases in the federal poverty guidelines, 50% of the federal poverty guidelines is now always higher than the dollar amounts specified in prior law.

Delays of eligibility determinations

(R.C. 5107.12)

A CDJFS is required, when it receives an application for OWF, to promptly make an investigation and record of the applicant's circumstances and obtain such other information as may be required. On completion of the investigation, the CDJFS must determine whether the assistance group is eligible for OWF, the amount of cash assistance the applicant should receive, and the approximate date when participation shall begin. The act requires the CDJFS to make these determinations *as soon as possible*. It also prohibits the CDJFS from delaying making the determination of whether the applicant is eligible for OWF on the basis that the individuals required to enter into a self-sufficiency contract with the CDJFS have not yet done that.[93]

Ohio Works First sanctions

(R.C. 5107.16 and 5107.05)

Continuing law modified by the act requires a CDJFS to sanction an assistance group if a member fails or refuses, without good cause, to comply in full with a provision of the assistance group's self-sufficiency contract.

The sanctions for not complying with a self-sufficiency contract are tiered. For a first failure or refusal to comply, a CDJFS must deny or terminate the assistance group's eligibility to participate in OWF for one payment month or until the failure or refusal ceases, whichever is longer. A second failure or refusal results in ineligibility for three payment months or until the failure or refusal ceases, whichever is longer. A third or subsequent failure or refusal results in ineligibility for the longer of six payment months or until the failure or refusal ceases. The act modifies the duration of the sanctions by providing that they last one payment month, three payment months, or six payment months (depending on whether it is the first, second, or subsequent sanction) rather than the longer of that period of time or until the failure or refusal ceases.

Prior law required each CDJFS to establish standards for the determination of good cause for failure or refusal to comply in full with a provision of a self-sufficiency contract. Prior law also specified circumstances that CDJFSs were to include in their standards in cases dealing with a failure or refusal to comply with

[93] The following must enter into a self-sufficiency contract: each adult member of an assistance group and an assistance group's minor head of household unless the minor head of household is participating in the Learning, Earning, and Parenting program (LEAP).

a work requirement included in a self-sufficiency contract. For example, a CDJFS must have provided that good cause exists for a failure or refusal to participate in a work activity, developmental activity, or alternative work activity if appropriate child care within a reasonable distance from a parent's work site was unavailable.

The act eliminates the authority for CDJFSs to establish their own standards for good cause and the examples of circumstances to be included in the standards. In its place, the act requires the ODJFS Director to establish the good cause standards in rules. The act eliminates a corresponding provision that requires a hearing officer and the Director to base the decision of a state hearing or administrative appeal regarding an OWF sanction on a CDJFS's good cause standards if the CDJFS provides the hearing officer or Director with a copy of the CDJFS's good cause standards.

A CDJFS is required to continue to work with an assistance group after sanctioning the assistance group to provide the member who caused the sanction an opportunity to demonstrate to the CDJFS a willingness to cease the failure or refusal to comply with the self-sufficiency contract. The act eliminates the reason for continuing to work with the assistance group as being to provide the member who caused the sanction an opportunity to demonstrate willingness to cease the failure or refusal to comply with the self-sufficiency contract.

LEAP program

(R.C. 5107.30, 5107.02, 5107.14, 5107.281, 5107.41, and 5107.42)

The Learning, Earning, and Parenting (LEAP) program is a component of OWF under which participating teens must attend an educational program that is designed to lead to the attainment of a high school diploma or its equivalent. The LEAP program is available to an OWF participant who is under age 18, or age 18 and in school, and a parent or pregnant. ODJFS is required to provide an incentive payment to teens who satisfy the LEAP program's education requirements and reduce a teen's OWF cash assistance payment for failure or refusal, without good cause, to meet the requirements. ODJFS is permitted to provide other incentives to teens who satisfy the LEAP program's education requirements.

Continuing law modified in part by the act provides that a minor head of household who is participating in the LEAP program is to be considered to be participating in a work activity for the purpose of OWF's work requirements. However, the minor head of household is not subject to the requirements or sanctions of the work requirements. The act provides instead that a minor head of household's participation in the LEAP program is to be counted in determining whether a CDJFS meets federal TANF work participation rates.

The act also does the following regarding the LEAP program:

- Provides that a LEAP participant is not required to enter into a self-sufficiency contract with a CDJFS and that no self-sufficiency contract is to include provisions regarding the LEAP program.

- Provides that a CDJFS is not to conduct an appraisal of a minor head of household for purposes of Ohio Works First's work requirements if the minor head of household is participating in the LEAP program.

- Provides that a CDJFS is not to assign a minor head of household who is participating in the LEAP program to a work activity or developmental activity.

Fugitive felons and probation violators

(R.C. 5107.36)

Prior law provided that the following were ineligible to participate in OWF:

- Fugitive felons.

- Individuals violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under federal or state law.

The act provides that these individuals are ineligible for assistance under OWF rather than ineligible to participate in OWF. This means that such individuals may be subject to work requirements even though ineligible for cash or other assistance under OWF.

TANF domestic violence option

(R.C. 5107.71, 5107.02, 5107.05, 5107.121, 5107.16, 5107.18, 5107.70, 5107.711, 5107.712, 5107.713, 5107.714, 5107.715, 5107.716, and 5107.717; Section 309.40.49)

Background

Federal law governing the TANF block grant permits a state to include in its state TANF plan standards and procedures to (1) screen and identify individuals receiving TANF assistance with a history of domestic violence while maintaining the confidentiality of such individuals, (2) refer such individuals to counseling and supportive services, and (3) waive, pursuant to a determination of good cause, program requirements in cases where compliance would make it more difficult for

individuals receiving TANF assistance to escape domestic violence or unfairly penalize such individuals who are or have been victimized by domestic violence or individuals at risk of further domestic violence.[94] "Domestic violence" is defined as having been subjected to (1) physical acts that resulted in, or threatened to result in, physical injury to an individual, (2) sexual abuse, (3) sexual activity involving a dependent child, (4) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities, (5) threats of, or attempts at, physical or sexual abuse, (6) mental abuse, or (7) neglect or deprivation of medical care.

Federal regulations regarding the TANF domestic violence option require that a good cause waiver be federally recognized in order for the waiver to be taken into account in determining whether the state has reasonable cause for failing to meet its work participation rates or complying with the five-year limit on federally-funded TANF assistance.[95] To be federally recognized, a good cause waiver must (1) identify the specific program requirements that are being waived, (2) be granted appropriately based on need, as determined by an individualized assessment by a person trained in domestic violence and redetermined no less often than every six months, and (3) be accompanied by an appropriate services plan. The services plan must be developed by a person trained in domestic violence, reflect the individualized assessment and any revisions indicated by the redetermination, and be designed to lead to work unless that would make it more difficult for the individual to escape domestic violence or unfairly penalize an individual who is or has been victimized by domestic violence or is at risk of further domestic violence.[96]

The act implements the domestic violence option but it does not require that the waivers of program requirements meet all of the requirements to be federally recognized. This means that a waiver may be ignored when the United States Department of Health and Human Services determines whether the state has reasonable cause for failing to meet its work participation rates or complying with the five-year limit on federally-funded TANF assistance. However, the act does not authorize a waiver from the federal five-year limit on federally-funded TANF assistance.

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[94] 42 U.S.C. 602(a)(7).

[95] 45 C.F.R. 260.54(b).

[96] 45 C.F.R. 260.52(c) and 260.55.

Screening and identifying individuals with a history of domestic violence

A CDJFS is permitted to conduct assessments of assistance groups participating in OWF to determine whether any members need other assistance or services provided by the CDJFS or other private or government entities. Prior law required a CDJFS, at the first assessment, to inquire as to whether any member was the victim of domestic violence, including child abuse. The CDJFS must have provided this information to ODJFS which was required to maintain the information for statistical analysis purposes.

The act instead requires each CDJFS to identify members of assistance groups applying for and participating in OWF who have been subjected to domestic violence by utilizing a domestic violence screening process ODJFS must establish in rules.

When utilizing the domestic violence screening process, a CDJFS is required, where available, to rely on all of the following:

(1) Records from police, courts, and other government entities;

(2) Shelters and legal, religious, medical, and other professionals from whom an assistance group sought assistance in dealing with domestic violence;

(3) Other persons with knowledge of the domestic violence.

Also, a CDJFS must rely on an assistance group's allegation of domestic violence unless the CDJFS has an independent, reasonable basis to find the allegation not credible.

Referrals to counseling and supportive services

A CDJFS is required by the act to refer a member of an assistance group who has been subjected to domestic violence to counseling and supportive services. The member may decline the counseling, supportive services, or both.

Maintaining confidentiality

The act requires that a CDJFS maintain the confidentiality of information about an assistance group member who has been subjected to domestic violence. However, when a CDJFS identifies such a member, it must provide information about the member to ODJFS. ODJFS is required to maintain the information for federal reporting and statistical analysis purposes only.

Waivers of program requirements

A CDJFS is required by the act to make a determination of whether an assistance group member who has been subjected to domestic violence should be issued a waiver that exempts the member from an OWF requirement. The CDJFS must issue a waiver if it determines that the member has been subjected to domestic violence and requiring compliance with the requirement would make it more difficult for the member to escape domestic violence or unfairly penalize the member. The waiver is to be effective for a period of time the CDJFS determines necessary.

The waiver must specify the particular requirement being waived. The waiver may not exempt the member from the federal five-year time limit on participating in OWF but may exempt an assistance group from the initial three-year time limit established by state law.[97] A CDJFS may not exempt the assistance group from the initial 36-month time limit until the assistance group has exhausted the 36 months. Such an exemption does not count toward the 20% limitation that applies to the general hardship exemption from the time limit.[98]

The act requires the CDJFS to redetermine the member's need for the waiver not less often than a period of time the ODJFS Director is to specify in rules.

A CDJFS that refuses to issue a waiver is required by the act to provide the member a written explanation for the refusal. The written explanation must be provided to the member in a manner that protects his or her confidentiality. The member is permitted to appeal the refusal to ODJFS.

The act provides that a member may decline a waiver. A member may also terminate a waiver at any time.

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[97] State law provides, with certain exceptions, that an assistance group is ineligible to participate in OWF if it includes an individual who has participated in OWF for 36 months as any of the following: an adult head of household, minor head of household, or spouse of an adult head of household or minor head of household. An assistance group that ceases to participate due to the initial 36-month time limit may, after 24 months, reapply to participate for an additional 24 months if good cause exists. (R.C. 5107.18.)

[98] Continuing law permits a CDJFS to exempt not more than 20% of the average monthly number of OWF assistance groups from the time limit due to hardship. (R.C. 5107.18(F).)

CDJFS to provide information

The act requires a CDJFS to provide assistance groups applying for or undergoing a redetermination of eligibility for OWF written and oral information about (1) the availability of counseling and supportive services to which a member of an assistance group who has been subjected to domestic violence is to be referred and (2) the availability of waivers of program requirements for domestic violence.

ODJFS duties

The act requires that ODJFS monitor CDJFSs' implementation of the TANF domestic violence option to ensure that they comply with the act's provisions regarding the option.

The ODJFS Director is required to adopt rules governing CDJFSs' implementation of the TANF domestic violence option, including rules establishing the domestic violence screening process and rules specifying the minimum frequency with which CDJFSs are to redetermine an assistance group member's need for a waiver. The Director must adopt the initial rules not later than January 1, 2008.

VI. Medicaid

Executive Medicaid administration

(Section 309.30.03)

The act requires the Governor to create an administration to manage all Medicaid policies and functions and promote the efficient and effective delivery of health care. The responsibilities of this body must include implementation of the recommendations of the Ohio Medicaid Administrative Study Council,[99] except

[99] Section 206.66.53 of Am. Sub. H.B. 66 of the 126th General Assembly created the Ohio Medicaid Administrative Study Council and required it to study the administration of the Medicaid program under the assumption that the General Assembly would enact by July 1, 2007, a law establishing a new cabinet level department to administer the program. The Council was required to submit, not later than December 31, 2006, a final report to the Governor, President of the Senate, and the Speaker of the House of Representatives containing (1) recommendations regarding the scope and structure of the new department, (2) a business plan that directs the transition of the Medicaid program's administration from ODJFS and the other state agencies that assist ODJFS to the new department and that addresses the transition's fiscal and operational impact, and (3) an identification of the resources needed to implement the business plan. The Council's final report contains recommendations in eight areas (business model, organizational

for the recommendation that a separate Medicaid department be created. In addition, the act requires the administration to (1) set up a governance structure that includes information technology, strategy and planning, program integrity, resource organization, local government relations, and unified budgeting, and (2) hire an executive director who must report directly to the Governor.

The act specifies, however, that the requirement that the Governor create the executive Medicaid administration does not authorize the Governor to replace ODJFS as the single state agency to supervise the administration of the Medicaid program.

Psychiatrist member of Pharmacy and Therapeutics Committee

(R.C. 5111.084)

The Pharmacy and Therapeutics Committee is part of ODJFS, but its duties are not specified in the Revised Code. The Committee has nine members, including two doctors of medicine and two doctors of osteopathy.

The act requires that at least one of the doctor members be a psychiatrist. The act does not address the issue of whether one of the doctor members must be replaced by a psychiatrist on the effective date of this provision of the act, if none of the doctor members is a psychiatrist, or whether a psychiatrist is to be added the next time one of the doctor members terminates membership on the Committee.

Medicaid provider agreements--overview

(R.C. 109.572, 5111.028, 5111.03, 5111.031 to 5111.034, and 5111.06)

To participate in the Medicaid program, a health care provider must enter into an agreement with ODJFS. This agreement, known as a provider agreement, serves as a contract between ODJFS and the provider. By signing the agreement, the provider agrees to comply with the terms of the agreement and all applicable state and federal laws. Medicaid reimbursement for providing health care services is contingent on a valid provider agreement being in effect when the services were provided.[100]

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structure, cross-functional practices, information technology, state and local impact, fiscal and budget, transition, and long term care) and is accessible at <http://www.medicaidstudycouncil.ohio.gov/Final-Report.pdf>.

[100] Ohio Administrative Code 5101:3-1-17 and 5101:3-1-172.

The act makes the following changes relative to Medicaid provider agreements:

(1) Requires the use of time-limited provider agreements;

(2) Eliminates the five-year limit for termination of a provider agreement based on an action brought by the Attorney General;

(3) Authorizes the denial or termination of a provider agreement for any reason permitted or required by federal law;

(4) Requires the suspension of a provider agreement held by a noninstitutional health care provider based on an indictment of the provider or its owner, officer, authorized agent, associate, manager, or employee;

(5) Authorizes the exclusion of an individual, provider, or entity from participation in Medicaid for any reason permitted or required by federal law;

(6) Modifies the circumstances under which ODJFS is not required to conduct an adjudication when imposing sanctions relative to a provider agreement, including sanctions imposed against a provider for failing to obtain or maintain a required certification;

(7) Permits ODJFS to require criminal records checks as a condition of becoming or continuing to be a Medicaid provider or an employee, owner, officer, or board member of a provider;

(8) Modifies the procedures used to obtain the criminal records checks required in the provision of home and community-based services through a Medicaid waiver program to a person with disabilities.

Time-limited provider agreements

(R.C. 5111.028)

Under ODJFS rules, Medicaid provider agreements are generally of two types: open-end and closed-end. An open-end agreement does not expire and continues to be in force as long as agreeable to ODJFS and the provider. A closed-end agreement expires on a designated date, cannot be in effect for more than 12 months, and may be renewed.[101]

[101] O.A.C. 5101:3-1-174.

The act requires ODJFS to phase-in the use of time-limited Medicaid provider agreements during a period beginning no later than January 1, 2008, and ending January 1, 2011. Each time-limited provider agreement is to expire three years from its effective date.

During the phase-in period, the act permits ODJFS to convert existing provider agreements without time limits to provider agreements with time limits. The Department may begin conversion of an ongoing provider agreement by sending a notice by regular mail to the address of the provider on record with the Department advising the provider of the conversion. The act also permits the Department to make the effective date of a provider agreement retroactive for a period not to exceed one year from the date of the application for the agreement, as long as the provider met all other Medicaid program requirements during that period.

The act requires the ODJFS Director to adopt rules for the use of time-limited provider agreements. Pursuant to the Director's ongoing rule-making authority regarding Medicaid, the rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

The act specifies that the rules for use of time-limited provider agreements must include a process for re-enrollment of providers. All of the following apply to the re-enrollment process:

(1) ODJFS can terminate a time-limited provider agreement or deny re-enrollment when a provider fails to file an application for re-enrollment within the time and in the manner required under the re-enrollment process.[102]

(2) If a provider files a re-enrollment application appropriately, but the agreement expires before ODJFS acts on the application or before the effective date of ODJFS's decision on the application, the provider is permitted to continue operating under the terms of the expired agreement until the effective date of ODJFS's decision.

(3) ODJFS's decision to approve an application for re-enrollment becomes effective on the date of the decision. A decision to deny re-enrollment cannot take effect sooner than 30 days after the ODJFS mails written notice of the decision to the provider. ODJFS must specify in the notice the date on which the provider is required to cease operating under the provider agreement.

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[102] The act specifies that ODJFS is not required to conduct an adjudication or issue an order in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.) when taking these actions.

The act provides that the act's provisions on time-limited provider agreements do not apply to the following, including any provider agreements issued to the following that are otherwise time-limited under the Medicaid program:

(1) A managed care organization under contract with ODJFS under the state's care management system;[103]

(2) A nursing facility;

(3) An intermediate care facility for the mentally retarded.

Termination of provider agreements based on Attorney General actions

(R.C. 5111.03(C))

Under continuing law modified in part by the act, the ODJFS Director is required to terminate a Medicaid provider agreement and stop reimbursement for services rendered when an action brought by the Attorney General results in the conviction of, or the entry of a judgment in either a criminal or civil action against, a Medicaid provider or its owner, officer, authorized agent, associate, manager, or employee. Prior law required the termination to be imposed for a period of up to five years from the date of conviction or entry of judgment.

The act eliminates provisions that limit the length of the termination to a period of up to five years. References to the period of termination are also eliminated.

As part of the ongoing termination statute, "owner" is defined as any person having at least a 5% ownership in the Medicaid provider. The act clarifies that the definition applies only to the termination statute, and not to other provisions of Medicaid law that use the same term.

Termination and denial of provider agreements based on federal law

(R.C. 5111.03(D))

The act authorizes the ODJFS Director to deny or terminate a provider agreement for any reason permitted or required by federal law. With regard to the provider, the act specifies that this authority does not limit the applicability of continuing laws governing the administrative procedures ODJFS must follow in taking actions relative to a Medicaid provider agreement.

[103] R.C. 5111.17.

Suspension of provider agreements based on indictments

(R.C. 5111.031)

The act establishes a process for suspending the Medicaid provider agreement held by a noninstitutional Medicaid provider based on an indictment. The process applies to any person or entity with a Medicaid provider agreement other than a hospital, nursing facility, or intermediate care facility for the mentally retarded. Regardless of any other state Medicaid statute to the contrary, ODJFS is required to use the suspension process to take action against a noninstitutional Medicaid provider or its owner, officer, authorized agent, associate, manager, or employee. An owner is subject to the process if the owner is a person with at least a 5% ownership in the noninstitutional provider.

Qualifying indictments

The indictments that result in application of the suspension process are differentiated according to the type of noninstitutional provider. Specifically, the act provides the following:

--In the case of a provider that is not an independent provider of home and community-based services for persons with disabilities, the suspension process applies when the indictment charges a person with committing an act that would be a felony or misdemeanor under Ohio law and the act relates to or results from either (1) furnishing or billing for medical care, services, or supplies under Medicaid or (2) participating in the performance of management or administrative services relating to furnishing medical care, services, or supplies under Medicaid.

--In the case of an independent provider of home and community based services for persons with disabilities, the suspension process applies when the indictment charges the independent provider with committing an act that would constitute one of the offenses that disqualify the provider from participating in Medicaid.

Process of suspension

On receiving notice and a copy of an indictment that is issued on or after the act's effective date and charges a noninstitutional Medicaid provider or its owner, officer, authorized agent, associate, manager, or employee with committing one of the offenses described above, ODJFS is required by the act to suspend the provider's Medicaid provider agreement. In addition, ODJFS must terminate Medicaid reimbursement to the provider for services rendered.

The suspension is to continue in effect until the proceedings in the criminal case are completed through conviction, dismissal of the indictment, plea, or

finding of not guilty. If ODJFS commences a process to terminate the provider agreement, the suspension is to continue in effect until the termination process is concluded.

A provider, owner, officer, authorized agent, associate, manager, or employee subject to a suspension based on indictment cannot own or provide services to any other Medicaid provider or risk contractor or arrange for, render, or order services for Medicaid recipients during the period of suspension. Such persons cannot receive reimbursement in the form of direct payments from ODJFS or indirect payments of Medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

Exceptions

Under the act, ODJFS cannot suspend a provider agreement or terminate Medicaid reimbursement if the provider or owner can demonstrate that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment. Additionally, the act permits ODJFS to adopt rules specifying circumstances under which a provider agreement will not be suspended.

Effect on payment

The act specifies that the termination of Medicaid reimbursement applies only to payments for Medicaid services rendered subsequent to the date on which ODJFS provides notice of the termination. Claims for reimbursement for services rendered prior to the notice may be subject to prepayment review procedures whereby ODJFS reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes and rules, and are otherwise complete.

Notice

Not later than five days after suspending a provider agreement based on an indictment, ODJFS must send notice of the suspension to the affected provider or owner. In providing the notice, ODJFS must do all of the following:

(1) Describe the indictment that was the cause of the suspension, without necessarily disclosing specific information concerning any ongoing civil or criminal investigation;

(2) State that the suspension will continue in effect until the proceedings in the criminal case are completed and, if the department commences a process to terminate the provider agreement, until the termination process is concluded;

(3) Inform the provider or owner of the opportunity to submit a request for a reconsideration.

Reconsideration

A provider or owner subject to suspension based on an indictment is permitted by the act to request a reconsideration. The request must be made not later than 30 days after receipt of the suspension notice from ODJFS. The act specifies that the reconsideration is not subject to an adjudication hearing pursuant to the Administrative Procedure Act (R.C. Chapter 119.).

In requesting a reconsideration, the provider or owner must submit written information and documents to ODJFS. The information and documents may pertain to any of the following issues:

(1) Whether the determination to suspend the provider agreement was based on a mistake of fact, other than the validity of the indictment;

(2) Whether any offense charged in the indictment resulted from an offense for which the suspension may be made under the act;

(3) Whether the provider or owner can demonstrate that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the indictment.

The act requires ODJFS to review the submitted information and documents. After the review, the suspension can be affirmed, reversed, or modified, in whole or in part. ODJFS must notify the affected provider or owner of the results of the review. The review and notification of its results must be completed not later than 45 days after receiving the information and documents submitted in the request for reconsideration.

Rules

The act permits ODJFS to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the act's process for suspending Medicaid provider agreements based on indictment.

Exclusion from Medicaid participation

(R.C. 5111.03(D))

The act authorizes the ODJFS Director to exclude an individual, provider of services or goods, or other entity from participation in the Medicaid program. The exclusion may occur for any reason permitted or required by federal law. With

regard to the provider, the act specifies that the ODJFS Director's exclusion authority does not limit the applicability of continuing laws governing the administrative procedures ODJFS must follow in taking actions relative to a Medicaid provider agreement.

When excluded from Medicaid participation under the act, an individual, provider, or entity cannot own or provide services to any other Medicaid provider or risk contractor or arrange for, render, or order services for Medicaid recipients during the period of exclusion. Additionally, during the exclusion period, the individual, provider, or entity cannot receive reimbursement in the form of direct payments from ODJFS or indirect payments of Medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

The act specifies that an individual, provider, or entity excluded from Medicaid participation may request a reconsideration of the exclusion. The Director is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) governing the process for requesting a reconsideration.

Administrative actions relative to provider agreements

(R.C. 5111.06 (primary); R.C. 5111.023(C) and 5111.031(C))

Under continuing law modified by the act, ODJFS is generally required to issue orders pursuant to an adjudication conducted in accordance with the Administrative Procedure Act when it enters into a Medicaid provider agreement or imposes sanctions relative to the agreement. Exceptions apply in specified circumstances, including actions taken by ODJFS because a Medicaid provider's license has been denied or revoked.

The act modifies the exceptions that apply to ODJFS's duty to issue orders pursuant to an adjudication. Specifically, the act provides that adjudication requirement does not apply when any of the following occur:

(1) The terms of a provider agreement require the provider to hold a license, permit, or certificate, and the provider's license, permit, or certificate is not renewed or is suspended or otherwise limited, or the provider has not obtained the required license, permit, or certificate.

(2) The terms of a provider agreement require the provider to maintain certification and the certification is denied, revoked, not renewed, suspended, or otherwise limited, or the provider has not obtained the required certification.

(3) The provider agreement is denied, terminated, or not renewed based on an action taken in Ohio against the provider's license, permit, certificate, or certification, notwithstanding the fact that the provider may hold a license, permit, certificate, or certification from another state.

(4) The provider agreement is suspended under the act's provisions authorizing suspension based on an indictment.

(5) The provider agreement is denied, terminated, or not renewed because the provider has been convicted of one of the offenses that caused the provider agreement to be suspended based on an indictment.

(6) The provider agreement is terminated or an application for re-enrollment is denied because the provider has failed to comply with the re-enrollment procedures established under the act's requirements for the use of time-limited provider agreements.

(7) The provider agreement is converted under the act from a provider agreement that is not time-limited to a provider agreement that is time-limited.

Criminal records checks of Medicaid providers

(R.C. 5111.032 (primary); R.C. 109.572)

The act authorizes ODJFS to require that persons submit to a criminal records check as a condition of obtaining a Medicaid provider agreement, continuing to hold a provider agreement, being employed by a provider, having an ownership interest in a provider, or being an officer or board member of a provider. The act requires ODJFS to designate the categories of persons who are subject to the criminal records check requirement and requires ODJFS to designate the times at which the criminal records checks must be conducted.

Applicability of the requirement

The act specifies that its provisions do not apply to persons who are subject to criminal records checks under continuing law as a condition of being a Medicaid provider or employee with respect to a home and community-based services waiver program for persons with disabilities.

For purposes of the criminal records check requirement, "provider" is defined as any person, institution, or entity that has a Medicaid provider agreement with ODJFS pursuant to federal Medicaid law. An "owner" is a person who has an ownership interest in a Medicaid provider in an amount designated by ODJFS in rules adopted under the act. The act specifies that references to ODJFS include a designee of ODJFS.

Informing persons of the requirement

The act requires ODJFS to inform each provider or provider applicant whether the provider or applicant is subject to a criminal records check. For providers, the information must be given at times designated in the rules ODJFS is permitted to adopt under the act. For provider applicants, the information must be given at the time of initial application. When the information is given, ODJFS must specify which of the provider's or applicant's employees or prospective employees, owners or prospective owners, officers or prospective officers, or board members or prospective board members are subject to the criminal records check requirement.

A provider that is subject to the criminal records check requirement must inform each person specified by ODJFS that the person is required to submit to a criminal records check for final consideration for employment in a full-time, part-time, or temporary position; as a condition of continued employment; or as a condition of becoming or continuing to be an owner, officer, or board member of a provider. The information must be given at times designated in the rules ODJFS is permitted to adopt under the act.

Initiating the criminal records check

If a provider or provider applicant is subject to a criminal records check under the act, ODJFS must require the conduct of a criminal records check by the Superintendent of the Bureau of Criminal Identification and Investigation. If the provider or applicant does not present proof of having been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or provide evidence that within that five-year period the Superintendent has requested information about the individual from the Federal Bureau of Investigation (FBI) in a criminal records check, ODJFS must require the provider or applicant to request that the Superintendent obtain information from the FBI as part of the criminal records check of the provider or applicant. Even if the provider or applicant presents proof of having been an Ohio resident for the five-year period, ODJFS may require that the provider or applicant request that the Superintendent obtain information from the FBI and include it in the criminal records check.

In turn, the provider must require the conduct of a criminal records check by the Superintendent with respect to each of the persons ODJFS specifies as being subject to the criminal records check requirement. These persons are subject to the same provisions that apply to the provider with regard to the need to request that the Superintendent obtain information from the FBI.

ODJFS must give each provider or provider applicant information about accessing and completing the form and fingerprint impression sheets necessary for the Superintendent to conduct the criminal records check. The provider, likewise, must give the information to each person for whom the provider is responsible. In both cases, the persons subject to the requirement must submit the forms and fingerprint impressions to the Superintendent and pay all applicable fees.

The Superintendent must conduct the criminal records check in accordance with procedures established under continuing law for criminal records checks. When the criminal records check pertains to a provider or provider applicant, the Superintendent must be instructed to submit the report directly to the ODJFS Director. When the criminal records check pertains to a person required by a provider to submit to a records check, the Superintendent must be instructed to submit the report directly to the provider. The act permits ODJFS to require that the provider submit the person's report to ODJFS.

If a provider or provider applicant is given the information about obtaining a criminal records check but fails to obtain the check, ODJFS is required by the act to terminate the provider agreement or deny the application to be a provider. Similarly, if a provider gives a person the information about obtaining a criminal records check but the person fails to obtain the check, the provider is prohibited from allowing the person to serve as an employee, owner, officer, or board member of the provider.

Disqualifying offenses

Except in circumstances specified in rules ODJFS is permitted to adopt under the act, the act requires ODJFS to terminate a provider agreement or deny issuance of a provider agreement if the provider or applicant is subject to a criminal records check and has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of a specified list of offenses. Similarly, a provider is prohibited from allowing a person to be an employee, owner, officer, or board member of the provider if the person is subject to a criminal records check under the act and has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the same offenses. Under the act, all of the following are disqualifying offenses:

(1) Aggravated murder; murder; voluntary manslaughter; involuntary manslaughter; reckless homicide; felonious assault; aggravated assault; assault; failing to provide for a functionally impaired person; aggravated menacing; patient abuse; gross patient neglect; patient neglect; kidnapping; abduction; criminal child enticement; extortion; coercion; rape; sexual battery; unlawful sexual conduct with a minor; gross sexual imposition; sexual imposition; importuning; voyeurism;

public indecency; compelling prostitution; promoting prostitution; procuring; soliciting; prostitution; engaging in prostitution after a positive HIV test; disseminating matter harmful to juveniles; pandering obscenity; pandering obscenity involving a minor; pandering sexually oriented matter involving a minor; illegal use of minor in nudity-oriented material or performance; aggravated robbery; robbery; aggravated burglary; burglary; breaking and entering; any theft offense; unauthorized use of a vehicle; unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; passing bad checks; misuse of credit cards; forgery; forging identification cards or selling or distributing forged identification cards; Medicaid fraud; securing writings by deception; insurance fraud; Workers' Compensation fraud; identity fraud; receiving stolen property; disorderly conduct; unlawful abortion; endangering children; contributing to the unruliness or delinquency of a child; domestic violence; falsification; illegal conveyance of weapons onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of drugs of abuse onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of intoxicating liquor onto the grounds of a detention facility or a mental health or mental retardation institution; illegal conveyance of cash onto the grounds of a detention facility; attempt to commit an offense; carrying concealed weapons; having weapons while under disability; improperly discharging a firearm at or into a habitation, in a school safety zone, or with intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function; engaging in a pattern of corrupt activity; corrupting another with drugs; any trafficking in drugs offense; illegal manufacture of drugs or cultivation of marihuana; funding of drug or marihuana trafficking; illegal administration of distribution of anabolic steroids; any drug possession offense; permitting drug abuse; offenses related to drug paraphernalia; deception to obtain a dangerous drug; illegal processing of drug documents; placing a harmful or hazardous object or substance in any food or confection; felonious sexual penetration in violation of former state law; a violation of the offense of child stealing as it existed prior to July 1, 1996; a violation of the prohibition against interference with custody that would have been a violation of the offense of child stealing as it existed prior to July 1, 1996, had the violation been committed prior to that date;

(2) An existing or former law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in the preceding paragraph.

Medicaid or Medicare exclusion

In addition to prohibiting the employment of a person based on a disqualifying offense, the act prohibits a Medicaid provider from employing a

person who has been excluded from participation in Medicaid, Medicare, or any other federal health care program.

Conditional employment

The act allows a Medicaid provider to employ a person prior to obtaining the results of a criminal records check, but only if the person submits a request for a criminal records check not later than five business days after beginning the conditional employment. The provider must terminate the person's employment if the results of the criminal records check are not obtained within 60 days after the request is made. Regardless of when the results are obtained, if the results indicate that the individual has been convicted of, has pleaded guilty to, or has been found eligible for intervention in lieu of conviction for any of the disqualifying offenses, the provider must terminate the person's employment. The employer, however, may choose to retain the individual if ODJFS adopts rules specifying circumstances when such a person may be employed.

Confidentiality

The report of the criminal records check is not a public record for purposes of Ohio's public records law and must not be made available to any person other than the following:

(1) The person who is the subject of the criminal records check or the person's representative;

(2) The ODJFS Director and the staff of ODJFS in the administration of the Medicaid program;

(3) A court, hearing officer, or other necessary individual involved in a case dealing with the denial or termination of a provider agreement;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with a person's denial of employment, termination of employment, or employment or unemployment benefits.

Rules

The act authorizes ODJFS to adopt rules in accordance with the Administrative Procedure Act to implement the act's criminal records check provisions. The rules may specify circumstances under which ODJFS may continue a provider agreement or issue a provider agreement when the provider or applicant has a record of a disqualifying offense. Similarly, the rules may specify circumstances under which a provider may permit a person to be an employee,

owner, officer, or board member of the provider when the person has a record of a disqualifying offense.

Criminal records checks of home and community-based service providers

(R.C. 5111.033 and 5111.034 (primary); R.C. 109.572)

Continuing law modified by the act requires criminal records checks to be conducted as a condition of employment in a position that involves providing home and community-based services through a Medicaid waiver program to a person with disabilities. Continuing law also requires criminal records checks to be conducted as a condition of receiving a Medicaid provider agreement as an independent provider of such home and community-based services. A person is disqualified from being employed in the position or from being a Medicaid provider if the person has been convicted of or pleaded guilty to any of the offenses specified in ongoing law.

The act modifies the process that must be followed in obtaining the criminal records checks and includes additional disqualifying offenses. Specifically, the act does the following:

(1) Requires the person who is subject to the criminal records check to obtain the criminal records check, in place of the duty that formerly applied to the chief administrator of the agency in which the person was to be employed, or in the case of a provider agreement, the duty that applied to ODJFS;

(2) Requires that the person be given information about accessing, completing, and forwarding to the Superintendent of the Bureau of Criminal Identification and Investigation the forms and fingerprint impression sheets necessary to obtain the criminal records check;

(3) Requires that the person be given written notice to instruct the Superintendent to forward the completed criminal records check report directly to the chief administrator of the agency or, in the case of a provider agreement, directly to ODJFS;

(4) Adds the following as disqualifying offenses: soliciting, Workers' Compensation fraud, identity fraud, disorderly conduct, endangering children, falsification, attempt to commit an offense, engaging in pattern of corrupt activity, and offenses related to drug paraphernalia;

(5) Disqualifies a person from employment or from receiving a provider agreement if the person has been found eligible for intervention in lieu of conviction for any of the offenses that would disqualify the person on conviction;

(6) Continues ODJFS's duty to adopt rules specifying circumstances under which a person convicted of one of the disqualifying offenses may be employed or be a Medicaid provider, but eliminates the provision requiring that the person meet personal character standards set by ODJFS;

(7) Specifies, in the case of an employee or potential employee, that the report of the person's criminal records check can be made available to an administrator at ODJFS.

Electronic submission and storage of Medicaid applications and related documents

Requirements

(R.C. 5111.017(A) and (C) and 5111.0121)

The Governor vetoed a provision that would have required, to the extent permitted by federal law and beginning July 1, 2009, (1) Medicaid applications to be submitted through the Internet or by other electronic means, and (2) county departments of job and family services that accept documents related to Medicaid applications to convert such documents to an electronic format and store them electronically.

The provision also would have required each county department, not later than June 30 of each year, to calculate the total expenses the county incurred in the state fiscal year ending in the previous calendar year to comply with the electronic conversion and storage requirements.

Rules

(R.C. 5111.017(B) and 5111.0121)

The provision vetoed by the Governor required the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.), as necessary, to implement both requirements described above. At a minimum, the Director was to adopt rules on all of the following:

(1) Ensure that Medicaid applications could be transmitted and received in a manner that maintains the confidentiality of information contained in them.

(2) The manner in which copies of the documents that were not electronic copies must have been disposed of. The manner specified must not have compromised the confidentiality of the information contained in the documents.

(3) The measures county departments must have taken to maintain the confidentiality of the information contained in the documents that would have been stored electronically.

Assistance from ODJFS

(Section 309.30.05)

The Governor vetoed a provision that would have required ODJFS to assist county departments of job and family services in developing and obtaining electronic databases and other necessary systems through a competitive bidding process to comply with the electronic conversion and storage requirements described above.

Reduction in county share of public assistance expenses

(R.C. 5101.16)

Continuing law unchanged by the act requires each board of county commissioners to pay a percentage of the costs of public assistance programs. The sum of these percentages is the "county's share of public assistance expenditures."

The Governor vetoed a provision that would have required a county's share of public assistance expenditures for a state fiscal year to be reduced by the amount the county incurred in the state fiscal year ending in the previous calendar year to comply with the electronic conversion and storage requirements described above that it would have been required to calculate under the provision vetoed by the Governor.

Copies of medical records

(R.C. 3701.741)

Under continuing law, a health care provider or medical records company is required to provide one free copy of a patient's medical record to the following persons or entities:

(1) Ohio Bureau of Workers' Compensation;

(2) Ohio Industrial Commission;

(3) ODJFS;

(4) Ohio Attorney General;

(5) A patient or patient's personal representative if the medical record is necessary to support a Social Security disability claim or an application for Supplemental Security Income.

ODJFS may obtain its free copy in accordance with Chapter 5101. of the Revised Code, the general governing statutes for ODJFS.

The act adds county departments of job and family services to the entities entitled to obtain a free copy of a patient's medical record. The act also provides that ODJFS and county departments may obtain the free copy of a patient's medical record in accordance with Chapter 5111. of the Revised Code, the statutes governing Ohio's Medicaid program.

Nursing home and ICF/MR franchise permit fees

(R.C. 3721.541 and 5112.341)

Nursing homes; hospitals with skilled nursing facility, long-term care, or nursing home beds; and intermediate care facilities for the mentally retarded (ICFs/MR) are required to pay an annual franchise permit fee.

The money generated by the franchise permit fee on nursing homes and hospitals has been required to be deposited into two funds. One fund, the Home and Community-Based Services for the Aged Fund, gets 16% of all franchise permit fees and related penalties paid by nursing homes and hospitals for fiscal years 2006 and 2007. (Sixteen per cent represents the first $1 of the franchise permit fee.) Continuing law requires that all nursing home and hospital franchise permit fees and related penalties for fiscal year 2008 and thereafter be deposited into this fund. ODJFS and the Department of Aging are required to use the money in the fund for the Medicaid program, including the PASSPORT component of the Medicaid program, and the Residential State Supplement program.[104]

The other fund into which money generated by the nursing home and hospital franchise permit fee goes is the Nursing Facility Stabilization Fund. It is to receive all such franchise permit fees and related penalties that are not deposited into the Home and Community-Based Services for the Aged Fund. Because continuing law requires that all such fees and penalties be deposited into the Home and Community-Based Services for the Aged Fund beginning in fiscal year 2008, no future money, other than any interest or other investment proceeds earned on money previously credited to the fund, is to go into the Nursing Facility Stabilization Fund beginning in fiscal year 2008. ODJFS is required to use money

[104] R.C. 3721.56.

in the Nursing Facility Stabilization Fund to make Medicaid payments to nursing facilities.[105]

All money generated by the ICF/MR franchise permit fee and related penalties is required to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. ODJFS and the Department of Mental Retardation and Developmental Disabilities are required to use money in that fund for the Medicaid program and home and community-based services to persons with mental retardation or a developmental disability.

Nursing home and hospital fee not to decrease

(R.C. 3721.51 and 3721.56)

The franchise permit fee for nursing homes and hospitals is set at $6.25 per bed per day for fiscal years 2006 and 2007. Under prior law, the fee was scheduled to decrease to $1 per bed per day. The act eliminates the scheduled reduction, thereby maintaining the fee at $6.25 per bed per day. The act also provides for the Nursing Facility Stabilization Fund to continue to receive 84% of the money generated by the fee.

The act does not change the amount of the ICF/MR franchise permit fee. That fee is $9.63 per bed per day, plus an annual composite inflation factor adjustment.

Sanctions for failure to pay franchise permit fee

(R.C. 3721.541 and 5112.341)

ODJFS is permitted to assess a 5% penalty on the amount due for each month or fraction thereof that a nursing home, hospital, or ICF/MR fails to pay its franchise permit fee in full when due.[106] In addition to assessing the penalty, continuing law modified by the act permits ODJFS to do either of the following:

(1) Withhold an amount equal to the franchise permit fee and penalty from a Medicaid payment due to the nursing facility, hospital, or ICF/MR until the fee and penalty are paid.

[105] R.C. 3721.561.

[106] R.C. 3721.54 and 5112.34.

(2) Terminate the Medicaid provider agreement of the nursing facility, hospital, or ICF/MR.

The act permits ODJFS to offset an amount less than or equal to the franchise permit fee and penalty from a Medicaid payment, as an alternative to withholding an amount equal to the fee and penalty from a Medicaid payment until the fee and penalty are paid. ODJFS is permitted to do any of the following: (1) impose the offset, (2) institute a withholding, and (3) terminate the Medicaid provider agreement, rather than just taking one of those actions.

Continuing law permits ODJFS to make the offset without providing notice or conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).

Application of definition of "date of licensure"

(R.C. 5111.20)

Continuing law modified in part by the act governing Medicaid rates for nursing facilities and ICFs/MR uses the term "date of licensure" in the context of facilities' capital rates and for the purpose of determining a facility's initial rate. The act does not change the definition. Instead it provides that the definition applies in determinations of Medicaid rates for nursing facilities and ICFs/MR but does not apply in determinations of the franchise permit fee for a nursing facility or ICF/MR.

Third party liability for Medicaid claims

(R.C. 5101.571, 5101.572, 5101.573, 5101.574, 5101.575, 5101.58, 5101.59, and 5101.591)

Background--federal regulations and the Deficit Reduction Act of 2005

Congress intended that Medicaid be the payer of last resort; that is, if a Medicaid recipient has another source of payment for health services, that source is to pay instead of Medicaid.[107] Consistent with federal law that reflects this intent, the U.S. Secretary of Health and Human Services has promulgated regulations[108] that require states to have plans to do all of the following:

[107] U.S. Government Accountability Office. Medicaid Third Party Liability: Federal Guidance Needed to Help States Address Continuing Problems (Sept. 2006) (last visited Feb. 20, 2007), available at <http://www.gao.gov/new.items/d06862.pdf>, at p. 1.

[108] 42 C.F.R. Part 433, subpart D (2005).

(1) identify Medicaid recipients' other sources of health coverage, (2) determine the extent of the liability of third parties, (3) avoid payment of third party claims ("cost avoidance"), and (4) pay claims and later recover reimbursement from third parties if the state can reasonably expect to recover more than it spends in seeking reimbursement ("pay and chase").

Cost avoidance is preferred over pay and chase; however, there are circumstances for which the federal regulations prohibit cost avoidance or situations where the state Medicaid agency is hindered in its efforts to verify Medicaid recipients' private health coverage.[109]

To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005[110] made several changes to the third party liability provisions of federal Medicaid law.[111] Specifically, section 6035 of the Deficit Reduction Act amended federal Medicaid law (section 1902(a)(25) of the Social Security Act[112]) to do both of the following:[113]

(1) Clarify the specific entities that are considered "third parties" that may be liable for payment and cannot discriminate against individuals on the basis of Medicaid eligibility.

(2) Require states to enact laws requiring health insurers to do all of the following:

(a) Provide the state with coverage, eligibility, and claims data needed by the state to identify potentially liable third parties;

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[109] Exceptions to this requirement are for prenatal care services, preventative pediatric services, and services provided to a minor for whom the state is enforcing a child-support order against a noncustodial parent. 42 C.F.R. 433.139(b)(3). The U.S. Government Accountability Office report referenced above describes the ways in which state Medicaid agencies have been hindered in their efforts to verify Medicaid recipients' private health coverage.

[110] Pub. L. 109-171.

[111] Letter from Dennis G. Smith, Director, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, U.S. Department of Health & Human Services, to State Medicaid Directors (SMD #06-026) (dated Dec. 15, 2006), available at <http://www.cms.hhs.gov/smdl/downloads/SMD121506.pdf>.

[112] 42 U.S.C. 1396a(a)(25).

[113] Letter from Dennis G. Smith, supra.

(b) Honor the assignment to the state of a Medicaid recipient's right to payment by the insurers for health care items or services;

(c) Not deny assignment or refuse to pay claims submitted by Medicaid based on procedural reasons (*e.g.*, the failure of the recipient to present an insurance card at the point of sale, or the state's failure to submit an electronic, as opposed to a paper, claim).

ODJFS' right of recovery

(R.C. 5101.571, 5101.572, 5101.573(A)(1), and 5101.58)

In general, the act revises law regarding third party liability as required by the Deficit Reduction Act. It also adds other provisions that, in part, appear to address the May 2006 decision of the U.S. Supreme Court in *Arkansas Department of Health and Human Services v. Ahlborn*,[114] which held that the federal Medicaid statute permits a state to recover its payments for medical assistance only from the portion of a tort liability settlement attributable to medical items and services (rather than from the entire amount of the settlement).

One set of changes to address the Deficit Reduction Act provisions is discussed in this section of the analysis; another set is discussed under "***Assignment of rights to ODJFS***," below. The remainder of changes made by the act, including those that appear to address the *Ahlborn* decision (see "***Right of recovery from third parties in tort liability judgments and settlements***," below), are discussed following the assignment of rights discussion.

First, consistent with the Deficit Reduction Act's clarification of the specific entities that are considered "third parties" and "health insurers" that may be liable for payment and cannot discriminate against individuals on the basis of Medicaid eligibility (see (1), above), the act clarifies the definition of "third party."[115] It defines this term to include not only a person authorized to engage in the business of sickness and accident insurance or a health insuring corporation, but also a person or governmental entity providing coverage for medical services or items to individuals on a self-insurance basis, a group health plan as defined in

[114] 547 U.S. 268.

[115] Prior law (R.C. 5101.571(B)) defined a "third party" as any health insurer (as defined in R.C. 3924.41), individual, entity, or public or private program, that was or may have been liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient. "Third party" included any such insurer, individual, entity, or program that would have been obligated to pay for the service, even when such third party limited or excluded payments in the case of an individual eligible for Medicaid.

federal law,[116] a service benefit plan referenced in the Deficit Reduction Act,[117] a managed care organization, a pharmacy benefit manager, a third party administrator, and any other person or governmental entity that is, by law, contract, or agreement, responsible for the payment or processing of a claim for a medical item or service for a public assistance[118] recipient or participant.[119] The act also specifies that except when otherwise provided by law governing Medicare's status as a secondary payer,[120] a person or governmental entity mentioned above is a third party even if the person or governmental entity limits or excludes payments for a medical item or service in the case of a public assistance recipient.

Second, in accordance with the Deficit Reduction Act's requirement that states enact laws to require third parties to provide states with coverage, eligibility, and claims data needed by the states to identify potentially liable third parties (see (2)(a), above), the act requires a third party to (i) accept ODJFS' right of recovery,[121] (ii) respond to an inquiry made by ODJFS regarding a claim for payment of a medical item or service that was submitted to the third party not later than three years after the date of the provision of the medical item or service, (iii) pay a claim described in (ii), (iv) not deny a claim submitted by ODJFS solely on the basis of the date of submission of the claim, type or format of the claim form, or a failure by the medical assistance[122] recipient who is the subject of the claim to present proper documentation of coverage at the time of service if ODJFS submitted the claim not later than three years after the medical item or service was provided and ODJFS commences an action to enforce its right of recovery not later than six years after ODJFS submits the claim, and (v) provide, as ODJFS so

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[116] 29 U.S.C. 1167.

[117] 42 U.S.C. 1396a(a)(25).

[118] The act defines "public assistance" as medical assistance (see footnote below) or assistance under the Ohio Works First Program.

[119] The act maintains law that excludes the program for medically handicapped children, which is commonly referred to as the Bureau for Children with Medical Handicaps (BCMH), from the definition of "third party."

[120] 42 U.S.C. 1395y(b).

[121] See "***Right of recovery***" below.

[122] The act defines "medical assistance" as medical items or services provided under any of the following: (1) the Medicaid program, (2) CHIP Parts I, II, and III, and (3) the Disability Medical Assistance Program.

chooses, information or access to information,[123] or both, in the third party's electronic data system on ODJFS' request.

The time limitations associated with the requirements regarding responding to an inquiry regarding a claim and not denying a claim (in (ii) and (iv), above) apply only to submissions of claims to, and payments of claims by, a health insurer that the Deficit Reduction Act requires be subjected to the requirements discussed above. The Deficit Reduction Act provides that this includes self-insured plans, group health plans, service benefit plans, managed care organizations, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

With respect to the requirement regarding information (in (v), above), if ODJFS chooses to receive information directly, the act requires the third party to provide the information (i) in a medium, format, and manner prescribed by the ODJFS Director in rules, (ii) free of charge, and (iii) not later than the end of the 30th day after ODJFS makes its request, unless a different time is agreed to by the Director in writing. If ODJFS chooses to receive *access to information* (rather than, or in addition to, information directly from the third party), the act requires the third party to provide access by a method prescribed by the Director in rules. The act specifies that in facilitating access, ODJFS may enter into a trading partner agreement with the third party to permit the exchange of information via "ASC X 12N 270/271 Health Care Eligibility Benefit Inquiry and Response" transactions.[124]

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[123] The act defines "information" as (1) an individual's name, address, date of birth, and social security number, (2) the group or plan number, or other identifer assigned by a third party to a policy held by an individual or a plan in which the individual participates and the nature of the coverage, and (3) any other data the ODJFS Director specifies in rules.

[124] "ASC X 12N 270/271 Health Care Eligibility Benefit Inquiry and Response" refers to an electronic transaction standard required by the Transactions and Code Set Rules promulgated by the U.S. Secretary of Health & Human Services under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It is one of several standards that facilitate the electronic transfer of information ("electronic data interchange" or "EDI") between trading partners. TriWest Healthcare Alliance. Policies, procedures, and guidance for TRICARE providers (last visited Mar. 12, 2007), at p. 11, available at https://www.triwest.com/triwest/unauth/content/provider/handbook/02important.pdf and Health Insurance Reform: Modifications to Electronic Data Transaction Standards and Code Sets, 68 Fed. Reg. 8381 (Feb. 20, 2003) (codified at 45 C.F.R. Part 162).

The act also specifies that information provided by a third party to ODJFS is confidential and not a public record under the Ohio Public Records Law (R.C. 149.43).[125]

Assignment of rights to ODJFS

(R.C. 5101.573 and 5101.59)

Continuing law provides that the application for, or acceptance of, public assistance constitutes an automatic assignment to ODJFS of certain rights the applicant, recipient, or participant has, including any rights to medical support under an order of a court or administrative agency. Prior law provided that this also included any rights to payments by a liable third party for the cost of medical care and services arising out of injury, disease, or disability of the applicant, recipient, participant, or other members of the assistance group. The act provides that this also includes any rights to payments by a liable third party for the cost of medical assistance paid on behalf of a public assistance recipient or participant.

In accordance with the Deficit Reduction Act's requirements that states enact laws to honor the assignment to the state of a Medicaid recipient's right to payment by an insurer for health care items or services, the act requires a third party to accept the assignment of rights to ODJFS.

The act also requires a third party to treat a managed care organization as ODJFS for a claim in which (i) the individual who is the subject of the claim received a medical item or service through a managed care organization that has entered into a contract with ODJFS under law governing Medicaid managed care (R.C. 5111.16) and (ii) ODJFS has assigned its right of recovery for the claim to the managed care organization.

Right of recovery

(R.C. 5101.58)

An individual who receives medical assistance under Medicaid or the Disability Medical Assistance Program or participates in Ohio Works First gives a right of recovery to ODJFS and a county department of job and family services. The act provides that the individual gives the right of recovery *automatically*.

[125] This specification is in addition to ones in continuing law that provide that (1) the release of information to ODJFS is not to be considered a violation of any right of confidentiality or contract that the third party may have with covered persons, and (2) the third party is immune from any liability that it may otherwise incur through its release of information to ODJFS.

Prior law provided that the right of recovery was against the liability of a third party for the cost of medical services and care arising out of the individual's injury, disease, or disability. The act provides that the right of recovery is against the liability of a third party for the cost of medical assistance paid on behalf of the individual.

As mentioned above, the U.S. Supreme Court held in *Arkansas Department of Health and Human Services v. Ahlborn* that federal Medicaid law permits a state to recover its payments for medical assistance only from the portion of a tort liability settlement attributable to medical items and services. Some states' right of recovery laws give the state's Medicaid agency a right of recovery against the *entire amount* of a settlement or compromise of an action or claim, or court award or judgment.

In response to *Ahlborn*, the Chicago Regional Office of the Centers for Medicare & Medicaid Services (CMS) sent a letter in July 2006 to state Medicaid directors in its jurisdiction for the purpose of clarifying third party recovery rules and options for states in the context of this U.S. Supreme Court decision. CMS points out in the letter that while the Court rejected CMS's prior interpretation of federal Medicaid law to authorize states to enact laws permitting full recovery of Medicaid assistance payments from third party liability settlements, regardless of how the parties allocated the settlement, the Court also strongly noted that states should become involved in underlying tort litigation for purposes of influencing the amount that is allocated in a settlement to medical items and services. In addition, a fact sheet accompanying the letter outlines three options states are permitted, but not required, to use to potentially encourage Medicaid recipients who are tort settlement or judgment beneficiaries to cooperate in state Medicaid agency recovery actions where they will not receive a share of the settlement or judgment:[126]

(1) In accordance with federal Medicaid law (section 1902(a)(25)(B)) of the Social Security Act), a state may determine that it is more cost-effective to pursue a lesser amount from a tort settlement or judgment than the Medicaid recipient's full cost of care in order to avoid either full litigation or the state pursuing the claim itself.

[126] Letter from Ruth A. Hughes, Acting Associate Regional Administrator, Division of Medicaid and Children's Health, Chicago Regional Office, Centers for Medicare & Medicaid Services. State Options for Recovery Against Liability Settlement in Light of U.S. Supreme Court Decision in *Arkansas Department of Human Services v. Ahlborn* (July 2006) (on file with LSC staff).

(2) A state may deduct attorney fees and litigation costs from the settlement or judgment amount prior to seeking reimbursement for the Medicaid program.

(3) A state may compromise the state share of the settlement or judgment amount (to the extent the state wishes to give part or all of its portion of the Medicaid recovery to the recipient) as long as the compromise does not impinge on the federal share of the amount recovered by Medicaid.

The act repeals the provision of Ohio's law that specified that the *entire amount* of a settlement or compromise of an action or claim, or any court award or judgment, against a third party was subject to ODJFS's or a county department of job and family services' right of recovery. Instead, the act excludes a reference to the amount subject to recovery by merely specifying that "any payment, settlement, or compromise of an action or claim, or any court award or judgment," is subject to the right of recovery. The act also requires that a payment, settlement, compromise, judgment, or award that excludes the cost of medical assistance paid for by ODJFS or a county department not preclude ODJFS or a county department from enforcing its right of recovery. And, it permits a right of recovery to be enforced separately or jointly by ODJFS or the appropriate county department.

The act further appears to require the implementation of the second option proposed by CMS (see (2), above) by requiring that reasonable attorneys' fees, not to exceed one-third of the total judgment, award, settlement, or compromise, plus costs and other expenses incurred by the recipient or participant in securing the judgment, award, settlement, or compromise, first be deducted from the total judgment, award, settlement, or compromise. It also requires that ODJFS, or the appropriate county department of job and family services, receive no less than the lesser of (i) one-half of the amount remaining after fees, costs, and other expenses are deducted or (ii) the actual amount of medical assistance paid. Additionally, it prohibits a public assistance recipient from assessing attorney fees, costs, or other expenses against ODJFS or a county department when the applicable department enforces its right of recovery.

Disclosure requirements

(R.C. 5101.58(C), (D), and (E))

The act revises the provision of the right of recovery law regarding disclosure. Prior law required an individual subject to right of recovery to disclose, or have his or her representative disclose, the identity of any third party against whom the individual had or might have had a right of recovery before initiating any recovery action. The act requires the individual or the individual's

attorney, if any, to provide written notice of an informal recovery activity or the filing of a legal recovery action against a third party not later than 30 days after initiating the activity or filing. The act also requires that the third party's address be disclosed. The act maintains law that requires that the disclosure notice be given to ODJFS if the individual is a Medicaid recipient and to both ODJFS and a county department of job and family services if the individual receives Disability Medical Assistance. The individual is liable to reimburse ODJFS and the county department for the recovery received to the extent of medical payments ODJFS or the county department makes if the disclosure notice is not made. The act provides that the attorney, if any, is also liable.

Consideration of Medicaid, SCHIP, or Disability Medical Assistance Program eligibility for policy attainment or plan enrollment

(R.C. 5101.574)

Federal Medicaid law[127] prohibits a third party from taking an individual's Medicaid status into account in enrollment or payment decisions. The act enacts and expands this prohibition in Ohio law by prohibiting a third party from considering whether an individual is eligible for or receives medical assistance[128] when (i) the individual seeks to obtain a policy or enroll in a plan or program operated or administered by the third party or (ii) the individual, or a person or governmental entity on the individual's behalf, seeks payment for a medical item or service provided to the individual.

Denial, revocation, or termination of licensure or other approval

(R.C. 5101.575)

The act permits a governmental entity that is responsible for issuing a license, certificate of authority, registration, or approval that authorizes a third party to do business in Ohio to deny, revoke, or terminate the third party's license, certificate, registration, or approval or to impose a fine, as determined to be appropriate by the governmental entity, if the third party fails to comply with the act's requirements for third parties with respect to providing ODJFS with certain data or the prohibition on taking an individual's medical assistance status into

[127] 42 U.S.C. 1396a(a)(25)(G).

[128] As noted in a footnote above, the act defines "medical assistance" as medical items or services provided under any of the following: (1) the Medicaid program, (2) the State Children's Health Insurance Program (SCHIP) Parts I, II, and III, and (3) the Disability Medial Assistance Program.

account in enrollment or payment decisions. The denial, revocation, termination, or fine must be done in accordance with the Ohio Administrative Procedure Act.

In addition, the act permits the attorney general to petition a court of common pleas to enjoin the violation.

Rulemaking authority

(R.C. 5101.58, 5101.59, and 5101.591)

The ODJFS Director is permitted to adopt rules in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) to implement the law governing the right of recovery and the assignment of public assistance recipients' rights to ODJFS, including rules that specify what constitutes cooperating with efforts to obtain medical support and payments and when the cooperation requirement may be waived.

The act requires ODJFS to adopt rules to specify (i) additional data that should be included in the definition of "information" that ODJFS is permitted to obtain under the act, (ii) the medium, format, and manner in which a third party must provide information directly to ODJFS, and (iii) the method by which a third party must provide ODJFS with access to information.

Children's Health Insurance Program (CHIP) Part III

(R.C. 5101.52, 5101.521 to 5101.526, 5101.528, and 5101.529)

Continuing law authorizes ODJFS to provide health assistance through the Children's Health Insurance Program (CHIP) to individuals under age 19 who are in low-income families but are not otherwise eligible for Medicaid. Chip I provides assistance to individuals in families with income not exceeding 150% of the federal poverty guidelines. Chip II is for individuals with family incomes above 150% but not exceeding 200% of the poverty guidelines.

The act establishes CHIP Part III, which authorizes the ODJFS Director to request a federal waiver to provide health assistance to individuals with family incomes above 200% but not exceeding 300% of the federal poverty guidelines. If the Director submits a waiver request to the U.S. Secretary of Health and Human Services and the Secretary grants the waiver, the act requires the Director to implement CHIP III in accordance with the waiver and to stipulate that the program will be available only while federal financial participation is available. The act specifies that CHIP III is not to begin before January 1, 2008. The Director is to provide for CHIP III to be established under federal law governing children's health insurance programs, be provided under Medicaid, or a combination of the two.

The act permits the Director to adopt rules for the efficient administration of the program, including rules that establish all of the following:

(1) The conditions under which health assistance services will be reimbursed;

(2) The method of reimbursement for services reimbursable under the program;

(3) The amount of reimbursement, or the method by which the amount is to be determined, for each reimbursable service.[129]

The act specifies that the Director may contract with a person or government entity to perform the Director's administrative duties regarding CHIP III, other than the duty to submit a waiver and to adopt rules to carry out the program.

The act provides that the Director may determine an applicant's eligibility for CHIP III by any of the following means: (1) using ODJFS employees, (2) assigning the duty to county departments of job and family services, or (3) contracting with a person or government entity.

The act provides that if the Director determines that federal financial participation for CHIP III is insufficient to provide assistance to all individuals that may be eligible for the program, the Director may refuse to accept new applications or may make the program's eligibility requirements more restrictive.

The act specifies that if CHIP III is not provided for under Medicaid, the Director must establish an appeal process for individuals regarding program eligibility.

Premium requirements

(R.C. 5101.527)

The act requires the Director, to the extent permitted by federal law, to charge the following premiums for CHIP III participation:

(1) A premium of not less than $40 per month for a family with one individual receiving health assistance;

[129] The rules are to be adopted in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.).

(2) A premium of not less than $80 per month for a family with two individuals receiving health assistance;

(3) A premium of not less than $120 per month for a family with three individuals receiving health assistance.

Medicaid application

(R.C. 5101.529)

Under the act, a completed Medicaid application is to be treated as an application for CHIP III.

Medicaid for former foster children

(R.C. 5111.011)

Federal Medicaid law includes options that a state may implement regarding eligibility for the Medicaid program. One option, included in the Foster Care Independence Act of 1999 (P.L. 106-169), permits a state to cover independent foster care adolescents under its Medicaid program.[130] An "independent foster care adolescent" is an individual who is under age 21, was in foster care under the responsibility of a state on the individual's 18th birthday, and has assets, resources, and income not exceeding levels, if any, the state establishes. A state may limit eligibility to such an individual with respect to whom Title IV-E[131] foster care maintenance payments or independent living services were furnished before the individual's 18th birthday.[132]

Prior law permitted the ODJFS Director to amend the state Medicaid plan to make an individual receiving independent living services eligible for Medicaid. The act, instead, requires the Director to amend the state Medicaid plan to implement the option included in the Foster Care Independence Act of 1999. Specifically, the amendment is to cover an individual who meets all of the following requirements:

(1) Is under age 21.

(2) Was in foster care under the responsibility of the state on the individual's 18th birthday.

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[130] 42 U.S.C. 1396a(a)(10)(A)(ii)(XVII).

[131] Title IV-E is part of the Social Security Act.

[132] 42 U.S.C. 1396d(w).

(3) Title IV-E foster care maintenance payments or independent living services were furnished on the individual's behalf before the individual attained 18 years of age.

(4) Meets all other applicable eligibility requirements established in ODJFS rules.

The act requires the ODJFS Director to implement the state Medicaid plan amendment beginning January 1, 2008, if approved by the U.S. Secretary of Health and Human Services.

Eligibility of pregnant women for Medicaid

(R.C. 5111.014; Section 309.30.90)

Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states the option of covering other groups of persons and types of benefits. One group the state is required to cover as categorically needy is pregnant women.[133] However, the state is provided flexibility to determine income eligibility requirements. Prior law provided that a pregnant woman who meets other requirements was eligible for Medicaid if her family income was 150% or less of the federal poverty guidelines.

The act requires the ODJFS Director to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services to raise the income eligibility limit for pregnant women to family income of 200% of the federal poverty guidelines. ODJFS must submit the amendment not later than 90 days after the act's effective date. The increase is to be implemented not earlier than January 1, 2008.

Medicaid eligibility for parents of children under age 19

(R.C. 5111.019)

As noted above, federal Medicaid law requires participating states to cover certain groups of persons and types of benefits and gives states the option of covering other groups of persons and types of benefits. A group the state is required to cover is families with dependent children.[134] However, the state is provided flexibility to determine income eligibility requirements for participation. In addition to other eligibility requirements, continuing law provides that a parent

[133] 42 Code of Federal Regulations, 35 et seq.

[134] 42 Code of Federal Regulations, 35 et seq.

of a child under age 19 is eligible for Medicaid if the income of the family is 90% or less of the federal poverty guidelines. Eligibility for Medicaid under this provision was limited under prior law to two years from the date on which eligibility was established. The act eliminates the two-year limit on a parent's eligibility for Medicaid under this provision.

Healthcheck information

(R.C. 5111.016)

Under prior law, ODJFS was required to establish a combination of written and oral methods designed to provide information about the Healthcheck program[135] to all persons eligible for the program and their parents or guardians. Each CDJFS or other entity that distributed or accepted applications for Medicaid must have displayed the following message in a conspicuous place:

> Under state and federal law, if you are a Medicaid recipient, your child is entitled to a thorough medical examination provided through Healthcheck. Once this examination is completed, your child is entitled to receive, at no cost to you, any service determined to be medically necessary.

The act requires ODJFS to adopt rules establishing methods to provide information about the Healthcheck program. The rules must be established in accordance with federal law and Ohio's Administrative Procedure Act (Revised Code Chapter 119.). The act also eliminates the requirement that the language quoted above be displayed and instead requires that each CDJFS or other entity display a notice complying with the rules adopted by ODJFS.

Children's Buy-In Program

Establishment and eligibility for the program

(R.C. 5101.5211 and 5101.5215)

The act requires the ODJFS Director to establish the Children's Buy-In Program to provide medical assistance to certain individuals under age 19 who have family income of over 300% of the federal poverty limit. In accordance with

[135] "Healthcheck" is the Early and Periodic Screening, Diagnosis, and Treatment component of the Medicaid program under which services are provided to children (R.C. 3313.714).

rules adopted by the Director, an individual qualifies for medical assistance under the program if the individual does both of the following:

(1) Applies for the Children's Buy-In Program;

(2) Provides satisfactory evidence of the following:

(a) The individual is under 19;

(b) The individual's countable income[136] exceeds 300% of the federal poverty guidelines;

(c) The individual has not had creditable coverage[137] for at least six months before enrolling in the Children's Buy-In Program;

(d) One or more of the following applies to the individual:

(i) The individual is unable to obtain creditable coverage due to a pre-existing condition of the individual;

(ii) The individual lost the only creditable coverage available to the individual because the individual has exhausted a lifetime benefit limitation;

(iii) The premium for the only creditable coverage available to the individual is greater than 200% of the premium applicable to the individual under the Children's Buy-In Program;

(iv) The individual participates in the Program for Medically Handicapped Children.

(e) Any other eligibility requirements established by the Department.

The act requires the Director to submit to the United States Secretary of Health and Human Services an amendment to the state Medicaid plan, an

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[136] The act requires the ODJFS Director to adopt rules defining countable income in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

[137] Creditable coverage is defined in 42 U.S.C. 300gg(c)(1) as (1) a group health plan, (2) health insurance coverage, (3) Medicare parts A and B, (4) Medicaid, (5) medical care available through the United States Armed Forces (10 U.S.C. Chapter 55), (6) a medical care program of the Indian Health Service or of a tribal organization, (7) a state health benefits risk pool, (8) health insurance available to federal employees (5 U.S.C. Chapter 89), (9) a public health plan, or (10) a health plan available under the Peace Corps (22 U.S.C. 2504(e)).

amendment to the state child health plan, one or more requests for a federal waiver, or such an amendment and waiver requests as necessary to seek federal matching funds for the Children's Buy-In Program. The Director is not to begin implementing the program until after submitting the amendment, waiver request, or both. However, the Director may begin implementation of the program before receiving approval of the amendment, waiver request, or both using state funds only. The Director is to implement the program regardless of whether the amendment, waiver request, or both are denied. The act provides that the program is to be funded with state funds only if the United States Secretary denies federal matching funds for the program.

Premium and co-payments

(R.C. 5101.5212, 5101.5213, and 5101.5214)

The act requires the Director to establish rules requiring a monthly premium for participants in the Children's Buy-In Program. The act requires that premiums not be less than the following:

(1) In the case of an individual with countable income exceeding 300% but not exceeding 400% of the federal poverty guidelines, the following amounts:

(a) If no other member of the individual's family receives medical assistance under the program with the individual, $100.

(b) If one or more members of the individual's family receive medical assistance under the program with the individual, $150.

(2) In the case of an individual with countable income exceeding 400% but not exceeding 500% of the federal poverty guidelines, the following amounts:

(a) If no other member of the individual's family receives medical assistance under the program with the individual, $125.

(b) If one or more members of the individual's family receive medical assistance under the program with the individual, $175.

(3) In the case of an individual with countable income over 500% of the federal poverty guidelines, the full actuarially determined cost of the premium.

Under the act, if an individual does not pay the premium for two consecutive months, the individual loses eligibility for the program. The individual may not resume participation in the program until the unpaid premiums that accrued before the individual lost eligibility are paid.

Participation in the program may also require co-payments, to the extent required by rules established by the Director. A provider may, to the extent permitted by federal law, refuse to provide service to an individual if a co-payment authorized by the Director is not paid.

Children's Buy-In Program report

(R.C. 5101.5216)

The ODJFS Director is required to prepare a report on the program and submit the report to the Governor and General Assembly not later than December 31, 2008. The report is to examine the effectiveness of the program and include the number of individuals participating in the program and costs of the program.

Medicaid Buy-In for Workers with Disabilities Program

Background

To qualify for federal financial participation, a state's Medicaid program must cover certain populations. Federal law permits, but does not require, that a state's Medicaid program cover additional populations.

The federal Ticket to Work and Work Incentives Improvement Act of 1999 established two new populations that a state's Medicaid program may cover. However, a state may cover the second population only if it also covers the first. These two optional eligibility expansions are popularly known as the Medicaid buy-in.

The first population consists of individuals who, but for earnings in excess of a limit established under federal law, would be considered to be receiving Supplemental Security Income,[138] are at least age 16 but less than age 65, and have assets, resources, and income not exceeding such limitations, if any, as the state may establish.[139] The second population consists of employed individuals with a medically improved disability who have assets, resources, and income not exceeding such limitations, if any, as the state may establish.[140] An "employed

[138] Supplemental Security Income (SSI) is a federal program under which monthly payments of up to $623 are made to qualified disabled individuals who do not have sufficient work history to qualify for disability payments under the Social Security program.

[139] 42 U.S.C. 1396a(a)(10)(A)(ii)(XV).

[140] 42 U.S.C. 1396a(a)(10)(A)(ii)(XVI).

individual with a medically improved disability" is defined as an individual who (1) is at least age 16 but less than age 65, (2) is earning at least the applicable minimum wage requirement specified in federal law and working at least 40 hours per month or is engaged in a work effort that meets substantial and reasonable threshold criteria for hours of work, wages, or other measures, (3) has ceased to be eligible for Medicaid as part of the first population described above because the individual, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer meet federal definitions of disability, and (4) continues to have a severe medically determinable impairment as determined under federal regulations.[141]

Seeking federal approval to implement buy-in option

(R.C. 5111.70 and 5111.707)

The ODJFS Director is required by the act to submit an amendment to the state Medicaid plan and any federal waiver necessary to establish a new component of the Medicaid program to be known as the Medicaid Buy-In for Workers with Disabilities Program. The amendment and, if necessary, waiver are to be submitted to the United States Secretary of Health and Human Services not later than 180 days after the effective date of this provision of the act. The program is to be established in accordance with the act and the provision of the federal Ticket to Work and Work Incentives Improvement Act of 1999 that authorizes the Medicaid buy-in eligibility expansions. The Director is required to implement the program if the amendment and, if necessary, waiver are approved.

The act requires the Director to change or remove any provision in the state Medicaid plan amendment or federal waiver request as necessary to receive federal approval or avoid an extended delay in approval from the Secretary of Health and Human Services. This includes a change or removal that causes the program to include a provision that is inconsistent with the other provisions of the act regarding the program. The act provides that such a change or removal is to be done only to the extent necessary to obtain the Secretary's approval or avoid an extended delay in the approval of the program.

Eligibility for Medicaid Buy-In for Workers with Disabilities Program

(R.C. 5111.701, 5111.702, 5111.703, and 5111.708)

To qualify for the Medicaid Buy-In for Workers with Disabilities Program, an individual must apply to participate and provide satisfactory evidence that the individual:

[141] 42 U.S.C. 1396d(v).

(1) Is at least age 16 and under age 65;

(2) Is either considered disabled for the purpose of the Supplemental Security Income (SSI) program (regardless of whether the individual receives SSI benefits) and has earnings from employment[142] or meets the federal definition of "employed individual with a medically improved disability";

(3) Meets the program's resource limits;

(4) Meets the program's income requirements;

(5) Meets the additional eligibility requirements the ODJFS Director is to establish in rules.[143]

An individual may also have to pay a premium for participating in the program. (See "***Premium requirements***" below.)

Under the program's resource limitation, the value of the resources of an individual, less assets and asset value disregarded pursuant to rules the Director is to adopt, cannot exceed $10,000. However, the Director is required to annually adjust the asset eligibility requirement by the change in the consumer price index for all items for all urban consumers for the previous calendar year, as published by the United States Bureau of Labor Statistics. The annual adjustment must go into effect on the earliest possible date.

Under the program's income limitation, the income of an individual, less the first $20,000 of the individual's earned income and other disregarded amounts to be specified in rules, cannot exceed 250% of the federal poverty guidelines.[144] No amount that an individual's employer pays to obtain health insurance for one or

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[142] Federal law permits the establishment of a Medicaid buy-in program for workers with disability. To be eligible to participate in a buy-in program, the individual must meet all eligibility requirements for SSI and have earnings in excess of SSI earnings limitations. (42 U.S.C. 1396a(a)(10)(A)(ii)(XV).) The act states that, for purposes of meeting disability requirements through SSI eligibility, the individual must be considered disabled for the purpose of the SSI program and have earnings from employment. The act does not require a person to have earnings in excess of SSI limits or meet other SSI eligibility requirements. Because this is inconsistent with federal law, this portion of the program will require a waiver from the United States Secretary of Health and Human Services.

[143] The rules governing the Medicaid Buy-In for Workers with Disabilities Program are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

[144] The act defines "income" as including earned and unearned income. The ODJFS Director is required to adopt rules defining "earned income" and "unearned income."

more members of the individual's family[145] is to be treated as income of the individual. This exclusion includes any amount of the program's premium the employer pays.

Premium requirements

(R.C. 5111.704)

An individual whose income exceeds 150% of the federal poverty guidelines is required to pay an annual premium to qualify for the Medicaid Buy-In for Workers with Disabilities Program. The amount of the premium is to be determined as follows:

(1) Subtract an amount equal to 150% of the federal poverty guidelines, as applicable for a family size equal to the size of the individual's family, from the amount of the income of the individual's family;

(2) Subtract an amount specified under rules adopted by the Department from the difference determined under (1) above;

(3) Multiply the difference determined under (2) above by one tenth.

Six-months extended eligibility

(R.C. 5111.706)

The act permits an individual participating in the Medicaid Buy-In for Workers with Disabilities Program to continue to participate in the program for up to six months after the individual no longer has earnings from employment or no longer meets the federal definition of "employed individual with a medically improved disability" due to ceasing to be employed. The individual must continue to meet all of the program's other eligibility requirements.

Dual eligibility for Buy-In and home or community-based services

(R.C. 5111.705 and 5111.851)

Ohio's Medicaid program includes a number of components under which home or community-based services are provided as an alternative to services provided by a hospital, nursing facility, or intermediate care facility for the

[145] The act defines "family" as an applicant for or participant in the Medicaid Buy-In for Workers with Disabilities Program and the spouse and dependent children of the applicant or participant. "Family" also includes the parents of an applicant or participant who is under age 18.

mentally retarded. The components are authorized by federal waivers granted by the United States Department of Health and Human Services.

The act provides that no individual is to be denied eligibility for the Medicaid Buy-In for Workers with Disabilities Program on the basis that the individual receives home or community-based services under a Medicaid waiver. The act correspondingly provides that no individual is to lose eligibility for home or community-based services under a Medicaid waiver or have such services reduced or disrupted on the basis that the individual also receives services under the Medicaid Buy-In for Workers with Disabilities Program, even if the individual's income or assets increase to an amount above the eligibility limit for the Medicaid waiver (but not above the eligibility limit for the Medicaid Buy-In for Workers with Disabilities Program). Individuals receiving services under a Medicaid waiver are exempted by the act from paying any cost-sharing expenses otherwise applicable under the Medicaid waiver for any period during which they also participate in the Medicaid Buy-In for Workers with Disabilities Program.

Medicaid Buy-In Advisory Council

(R.C. 5111.709 and 5111.7010; Section 309.30.95)

The act creates the Medicaid Buy-In Advisory Council consisting of the following voting members:

- The Executive Director of Assistive Technology of Ohio or the Executive Director's designee.
- The Director of the Axis Center for Public Awareness of People with Disabilities or the Director's designee.
- The Executive Director of the Cerebral Palsy Association of Ohio or the Executive Director's designee.
- The Chief Executive Officer of the Ohio Advocates for Mental Health or the Chief Executive Officer's designee.
- The State Director of the Ohio Chapter of AARP or the State Director's designee.
- The Director of the Ohio Developmental Disabilities Council or the Director's designee.
- The Executive Director of the Governor's Council on People with Disabilities or the Executive Director's designee.

- The Administrator of the Legal Rights Service or the Administrator's designee.

- The Chairperson of the Ohio Olmstead Task Force or the Chairperson's designee.

- The Executive Director of the Ohio Statewide Independent Living Council or the Executive Director's designee.

- The President of the Ohio Chapter of the National Multiple Sclerosis Society or the President's designee.

- The Executive Director of the ARC of Ohio or the Executive Director's designee.

- The Executive Director of the Commission on Minority Health or the Executive Director's designee.

- The Executive Director of the Brain Injury Association of Ohio or the Executive Director's designee;

- The executive officer of any other advocacy organization who volunteers to serve on the Council, or such an executive officer's designee, if the other voting members determine it is appropriate for the advocacy organization to be represented on the Council;

- One or more participants who volunteer to serve on the Council and are selected by the other voting members after the Medicaid Buy-In for Workers with Disabilities Program is implemented.

The Council is also to include the following non-voting members:

- The Director of ODJFS or the Director's designee;

- The Administrator of the Rehabilitation Services Commission or the Administrator's designee;

- The Director of Alcohol and Drug Addiction Services or the Director's designee;

- The Director of Mental Retardation and Developmental Disabilities or the Director's designee;

- The Director of Mental Health or the Director's designee;

- The executive officer of any other government entity, or the executive officer's designee, if the voting members determine, at a meeting called by the chairperson, it is appropriate for the government entity to be represented on the Council.

Members of the Council are to serve without compensation or reimbursement, except as serving on the Council is considered part of their usual job duties. A member is to be elected by the members to serve as chairperson. A chairperson is to serve a two-year term and may be re-elected to successive terms as chairperson.

ODJFS is required to provide the Council with accommodations for the Council to hold its meetings. ODJFS must also provide the Council with other administrative assistance the Council needs to perform its duties.

The ODJFS Director must call the Council to meet for the first time not later than 60 days after the act's effective date. The Director or the Director's designee is required to meet at least quarterly with the Council to discuss the Medicaid Buy-in for Workers with Disabilities Program. The Council is permitted to provide the Director or Director's designee with suggestions for improving the program. The Director or designee must provide the Council with the following information:

- The number of individuals who participated in the program the previous calendar quarter.

- The cost of the program the previous calendar quarter.

- The amount of revenue generated the previous calendar quarter by the premiums paid under the program.

- The average amount of earned income of participants' families.

- The average amount of time participants have participated in the program.

- The types of other health insurance participants have been able to obtain.

The Director or Director's designee is required to consult with the Council before adopting, amending, or rescinding any rules governing the program.

Report

(R.C. 5111.7011)

The act requires that the ODJFS Director issue a report on the Medicaid Buy-In for Workers with Disabilities Program not less than once each year. The report is to be submitted to the Governor, Speaker and Minority Leader of the House of Representatives, President and Minority Leader of the Senate, and chairpersons of the House and Senate committees to which the biennial operating budget bill is referred. The report is to include the same information that the act requires the Director or Director's designee to provide the Medicaid Buy-In Advisory Council.

Medicaid estate recovery

(R.C. 5111.11, 2113.041, 2117.061, 2117.25, 5111.112, 5111.113, 5302.221, and 5309.082)

Background

Federal Medicaid law requires states to implement an estate recovery program under which a state, with certain exceptions, must seek adjustment or recovery from the estates of certain deceased Medicaid recipients.[146] The recoveries and adjustments are for the costs of services the Medicaid program correctly paid or will pay on an individual's behalf.

Recovery or adjustment regarding long-term care insurance policy

A state must seek adjustment or recovery from the estate of three groups of Medicaid recipients. The first group consists of Medicaid recipients age 55 or older. Permanently institutionalized individuals of any age comprise the second group.[147]

The third group consists of individuals who receive, or are entitled to receive, benefits under a long-term care insurance policy[148] in connection with

[146] 42 U.S.C. 1396p(b).

[147] A state must also seek adjustment or recovery on the sale of property of a permanently institutionalized individual (or such an individual's spouse) that is subject to a lien imposed on account of Medicaid paid or to be paid on the individual's behalf.

[148] Federal law permits a state to implement a qualified state long-term care insurance partnership program under which an individual may have a certain amount of assets or resources exempt from adjustment or recovery. The amount to be exempt is to equal the insurance benefit payments that are made to or on behalf of the individual under a long-

which assets or resources are disregarded in determining Medicaid eligibility. Recovery or adjustment regarding the third group is limited to the costs of nursing facility and other long-term care services the Medicaid program correctly paid or will pay on an individual's behalf.

ODJFS is required to institute an estate recovery program against the first two groups of Medicaid recipients. Prior law did not require ODJFS to seek adjustment or recovery against the third group.

The act amends state law governing the Medicaid Estate Recovery Program to require ODJFS to seek adjustment or recovery from the estate of other individuals as permitted by federal law.[149]

Medicaid estate recovery reporting form

Continuing law modified by the act requires a person responsible for a decedent's estate[150] to determine whether the decedent was, at any time during the decedent's life, a Medicaid recipient if the decedent, at the time of death, was age 55 or older or a permanently institutionalized individual. If the decedent was a Medicaid recipient, the person responsible for the decedent's estate must submit a properly completed Medicaid estate recovery reporting form to the administrator of the Medicaid Estate Recovery Program. The act requires instead that the person responsible for a decedent's estate submit the form if the decedent was subject to the Estate Recovery Program or the spouse of a decedent who was subject to the Estate Recovery Program.

Continuing law unchanged by the act requires the Medicaid estate recovery reporting form to require, at a minimum, that the person responsible for the estate

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term care insurance policy meeting federal requirements. (42 U.S.C. 1396p(b)(1)(C).) Am. Sub. H.B. 66 of the 126th General Assembly requires the ODJFS Director to establish a qualified state long-term care insurance partnership program as permitted by federal Medicaid law. H.B. 66 also provides that adjustment or recovery required under the Medicaid Estate Recovery Program is to be reduced in accordance with ODJFS rules for participants of the qualified state long-term care insurance partnership program.

[149] As stated above, the only other group against which ODJFS may seek adjustment or recovery are individuals who receive, or are entitled to receive, benefits under a long-term care insurance policy as provided in federal law (42 U.S.C. 1396p(b)).

[150] The person responsible for a decedent's estate is the executor, administrator, commissioner, or person who applied to the probate court to have the decedent's estate released from administration. According to an official with the Attorney General's office, the commissioner is the individual who signs off as fiduciary when application is made to release an estate from administration.

list all of the decedent's real and personal property and other assets that are part of the decedent's estate.[151] The act provides that this applies in the case of a decedent who was subject to the Medicaid Estate Recovery Program. In the case of a decedent who was the spouse of a decedent subject to estate recovery, the form must require, at a minimum, that the person responsible for the estate list all of the decedent's real and personal property and other assets that are part of the decedent's estate and were also part of the estate of the decedent who was subject to estate recovery.

Reporting forms for transfers of death deeds and survivorship tenancies

The act requires the administrator of the Medicaid Estate Recovery Program to prescribe a form regarding transfer of death deeds and a form regarding survivorship tenancies.

The beneficiary of a transfer on death deed or the beneficiary's representative is to provide certain information on the form regarding transfer on death deeds if the beneficiary survives the deceased owner of the real property or is in existence on the date of death of the deceased owner. The information is whether (1) the deceased owner was either a decedent subject to the Medicaid Estate Recovery Program or the spouse of such a decedent and (2) the real property was part of the estate of a decedent subject to estate recovery.

Regarding the form for survivorship tenancies, the surviving tenant or his or her representative is to indicate whether (1) the deceased survivorship tenant was either a decedent subject to the Medicaid Estate Recovery Program or the spouse of such a decedent and (2) the registered land under a survivorship tenancy was part of the estate of a decedent subject to estate recovery.

A county recorder is required to obtain a properly completed form regarding transfer on death deeds and send a copy to the administrator of the Medicaid Estate Recovery Program before recording a transfer. A county recorder must obtain a properly completed form regarding survivorship tenancies and send a copy to the administrator before registering a title in the surviving tenants.

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[151] "Estate" includes (1) all real and personal property to be administered under the state's probate law, (2) property that would be administered under that law if not for probate law authorizing limited releases from administration, and (3) any other real and personal property and other assets in which an individual had any legal title or interest at the time of death (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. (R.C. 5111.11(A)(1).)

Mental health partial hospitalization services

(R.C. 5111.023)

Continuing law modified in part by the act requires the state Medicaid plan to provide for community mental health facilities to include partial-hospitalization mental health services of three to fourteen hours per service day to mentally ill patients. The act removes the provision specifying the number of hours mental health services can be provided.

Mental health drugs

(R.C. 5111.085 and 5111.172(C))

The Governor vetoed a provision that would have provided, for purposes of the Medicaid program, that a mental health drug may be subjected to a prior authorization requirement, preferred drug list, or generic substitution requirement only if the drug is a brand name drug with a generic equivalent. The same limitation would have applied to the coverage of mental health drugs provided through a Medicaid-participating health insuring corporation. Under the vetoed provision, a drug was a mental health drug if one of the following applied:

(1) The drug was classified as an antianxiety, antidepressant, anticonvulsant, or antipsychotic central nervous system drug in the most recent edition of one of the following publications: (a) *The American Psychiatric Press Textbook of Psychopharmacology*, (b) *Current Clinical Strategies for Psychiatry*, (c) *Drug Facts and Comparisons*, or (d) a publication with a comparable focus and content as determined by the ODJFS Director.

(2) The drug was classified in one of the publications specified above as a central nervous system drug in a category or classification created after the act's effective date.

(3) The drug was classified in one of the publications specified above as a cross-indicated drug for any of the central nervous system drugs described in (1) or (2) above because the drug's use in that capacity is generally held to be reasonable, appropriate, and within the community standards of care even though the use was not included in the U.S. Food and Drug Administration's approved labeling for the drug.

(4) The drug was recommended for the treatment of a mental illness or mental disorder, as those terms are defined in the most recent edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

Medicaid occupational therapy services

(R.C. 5111.029)

The act requires the Medicaid program to cover occupational therapy services provided by a licensed occupational therapist.[152] Coverage may not be limited to services provided in a hospital or nursing facility. The act permits any licensed occupational therapist[153] to enter into a Medicaid provider agreement with ODJFS to provide occupational therapy services under the Medicaid program.

Medicaid cost-sharing program

(R.C. 5111.0112)

Prior law required the ODJFS Director to establish a co-payment program under which a Medicaid recipient was charged a co-payment for certain services. Co-payments may have been charged only for dental services, vision services, nonemergency emergency department services, and prescription drugs other than generic drugs, to the extent permitted by federal law.

The act requires the ODJFS Director to institute a cost-sharing program (instead of a co-payment program) for at least the services listed above and requires the program to establish requirements regarding premiums, enrollment fees, deductions, and similar charges in compliance with federal law. ODJFS is authorized by the act to work with other state agencies administering components of the Medicaid program to apply aspects of the cost-sharing program to the components administered by those agencies. The cost-sharing program is to be consistent with the Children's Buy-In Program established by the act if the program is a component of the Medicaid program (see "***Children's Buy-In Program***").

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[152] "Occupational therapy" means the therapeutic use of everyday life activities or occupations with individuals or groups for the purpose of participation in roles and situations in the home, school, workplace, community, and other settings. The practice of occupational therapy includes activities such as interventions and procedures to promote or enhance safety and performance in activities of daily living; consultative services, case management, and education of patients, to promote self-management, home management, and community and work reintegration; designing and instructing in the use of selected orthotic or prosthetic devices and other equipment which assists the individual to adapt to the individual's potential or actual impairment; and administration of topical drugs that have been prescribed by a licensed health professional authorized to prescribe drugs. (R.C. 4755.04, not in the act.)

[153] Occupational therapists are licensed under R.C. 4755.08.

Public Assistance Reporting Information System

(R.C. 5101.27 and 5101.272)

The act requires the ODJFS Director to submit a report no later than August 31, 2007, to the General Assembly on the costs and potential three-year cost savings associated with participation in the Public Assistance Reporting Information System (PARIS). If cost savings are indicated, the Director is to enter into any necessary agreements with the United States Department of Health and Human Services and neighboring states to join and participate as an active member in PARIS no later than October 1, 2007.

PARIS is a federally managed and voluntary federal-state partnership program providing information to participating states to assist in detecting improper public assistance payments. The system uses participant data, such as Social Security numbers, birth dates, or other distinguishing data, to determine duplicate interstate public assistance payments.[154] Continuing law provides exceptions to a general prohibition on the soliciting, disclosure, receiving, using, or knowingly permitting, or participating in the use of any information regarding a public assistance recipient for any purpose not directly connected with the administration of a public assistance program. The act adds PARIS to the exceptions to permit the Department to disclose information relating to public assistance participants to the extent necessary to participate in PARIS.

Primary Alternative Care Treatment program

(Section 309.32.60)

ODJFS established the Primary Alternative Care and Treatment (PACT) program in 1983 to assist in determining Medicaid recipients who have a history of utilizing Medicaid services that are not medically necessary. If a pattern of inappropriate utilization of services is determined through a review of the recipient's claims for services, the recipient is placed with PACT and assigned to a single primary care physician and pharmacy. PACT participants are enrolled for a minimum of 18 months. The recipient may receive services only from a single provider for the duration of PACT participation. A recipient may be released from the program if a review of services deems the services as medically necessary; the

[154] PARIS provides information and matches for participants of TANF, Medicaid, food stamps, Supplemental Security Income (SSI), and other federal or state public assistance programs.

participant enrolls in a Medicaid managed care plan; or is admitted to a long-term care facility.[155]

The act requires the ODJFS Director to submit a report to the General Assembly no later than January 1, 2008. The report is to compare the average monthly medical costs of participants in the program with the average monthly costs of those individuals prior to program participation. The act further requires the Director, no later than January 1, 2009, to submit a report on the total cost savings achieved through the program.

Pharmaceutical drug report

(Section 309.30.70)

ODJFS is authorized to establish the 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.[156]

The act requires the ODJFS Director, no later than one year after the effective date of this provision, to submit a report to the General Assembly on the effect of Medicare Part D and the care management system on the Supplemental Drug Rebate Program. The report is to evaluate the changing cost of pharmaceuticals for which supplemental rebates are made under the program as a result of the high volume of drug purchases being transferred to Medicare Part D. The report is to include a review of the use of generic drugs by Medicaid recipients and cost savings to be achieved by increasing the use of generic drugs.

Fraud, Waste, and Abuse Prevention and Detection

(R.C. 5111.101)

Continuing law modified by the act requires a person or government entity that receives or makes payments under the Medicaid Program that, during a calendar year, total $5 million to provide to employees, contractors, and agents detailed, written information about the role of the following in preventing and detecting fraud, waste, and abuse in federal health care programs: (1) federal false claims law, (2) federal administrative remedies for false claims and statements, (3) Ohio and other state law regarding civil and criminal penalties for false claims and statements, and (4) whistleblower protections. The information must include

[155] Ohio Administrative Code 5101:3-20-01, 5101:3-20-02, and 5101:3-20-03.

[156] R.C. 5111.081.

detailed information about the person or government entity's policies and procedures for preventing and detecting fraud, waste, and abuse. The person or government entity is also required to include this information in its employee handbook.

The act requires an "entity," rather than a "person or government entity," to comply with its requirements[157] if the entity receives or makes in a federal fiscal year payments under the Medicaid program, either through the state Medicaid plan or a federal Medicaid waiver, totaling at least $5 million. Not later than the first day of the succeeding calendar year, the entity must establish written policies, rather than written information, for its employees,[158] contractors, and agents[159] about the role of the federal and state laws and programs listed above in preventing and detecting fraud, waste, and abuse in federal health care programs.

The policies must include detailed provisions regarding the entity's policies and procedures for preventing and detecting fraud, waste, and abuse. The entity must disseminate the written policies to its employees, contractors, and agents in paper or electronic form and make the policies readily available, as well as include them in its employee handbook if it has one.

The act adds a requirement that an entity providing items or services at multiple locations or under multiple contractual or other payment arrangements comply with the act's requirements if it receives Medicaid payments totaling at least $5 million in a federal fiscal year. It specifies that this requirement applies regardless of whether the entity submits claims for Medicaid payments using multiple provider identification or tax identification numbers.

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[157] "Entity" is defined as "a governmental entity or an organization, unit, corporation, partnership, or other business arrangement, including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists, whether for profit or not-for-profit." "Entity" does not include "a government entity that administers one or more components of the Medicaid Program, unless the government entity receives Medicaid payments for providing items or services."

[158] The act adds a definition of "employee," which "includes any officer or employee (including management employees) of an entity."

[159] The act specifies that "contractor" and "agent" "include any agent, contractor, subcontractor, or other person who, on behalf of an entity, furnishes or authorizes the furnishing of health care items or services under the Medicaid Program, performs billing or coding functions, or is involved in monitoring of health care that an entity provides."

Private causes of action to enforce state Medicaid laws

(R.C. 5111.102)

The act prohibits any provision of state public welfare law (Title 51 of the Revised Code), or any other state law, that incorporates a provision of federal Medicaid law[160] or may be construed as requiring the state, a state agency, or any state official or employee to comply with that federal provision, from being construed as creating a cause of action[161] to enforce the state law that differs from the causes of action available under federal law.

Medicaid Care Management Working Group

(R.C. 5111.161, repealed)

The main operating budget bill of the 126th General Assembly (Am. Sub. H.B. 66) created the Medicaid Care Management Working Group. The group was to develop guidelines for ODJFS to consider when entering into contracts with managed care organizations for purposes of the Medicaid care management system. The act required the Working Group to prepare an annual report on its activities. The report was to include any findings and recommendations the Working Group considered relevant to its duties.

The act repeals the law authorizing creation of the Working Group.

Performance-based financial incentives in managed care contracts

(R.C. 5111.17)

H.B. 66 also required 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 could take into consideration the recommendations made by the Medicaid Care Management Working Group.

The act eliminates ODJFS's specific authority to include performance-based financial incentives in managed care contracts.

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[160] Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.

[161] "Cause of action" is not defined in the act, but is defined in a legal dictionary as "the right which a party has to institute a judicial proceeding." (BLACK'S LAW DICTIONARY 221 (6th ed. 1990).

Actuarially sound Medicaid managed care capitation rates

(R.C. 5111.17)

The Governor vetoed a provision that would have required ODJFS to develop, certify, and implement actuarially sound capitation rates[162] for purposes of making payments under Medicaid managed care contracts with health insuring corporations (HICs). In taking these actions, ODJFS would have been required by the vetoed provision to comply with all applicable requirements of federal statutes and regulations.[163]

Before ODJFS submitted proposed capitation rates for approval by the U.S. Centers for Medicare and Medicaid Services (CMS), the provision would have required ODJFS to prepare a separate document specifying the manner in which the rates would conform to generally accepted actuarial principals and practices. When the proposed rates were submitted for approval, ODJFS must have included the document as part of its submission of information to CMS. The provision would have required that the document include information on the following: (1) how the proposed rates were appropriate with respect to the individuals or groups who would have been enrolled in the HICs, (2) how the rates were appropriate for the services that would be covered by the HICs, (3) how the rates were adequate to meet the HICs' administrative requirements, and (4) any other matter ODJFS considered relevant to the development of actuarially sound capitation rates.

In preparing the document, ODJFS would have been authorized to consult with the Superintendent of Insurance. The vetoed provision specified that ODJFS could have asked the Superintendent to assess whether the proposed rates would do any of the following:

(1) Adversely affect a HIC in a manner that would have resulted in the need to prepare and submit a risk based capital plan;[164]

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[162] As defined in federal regulations, "actuarially sound capitation rates" are rates that (1) have been developed in accordance with generally accepted actuarial principles and practices, (2) are appropriate for the populations to be covered, and the services to be furnished under the contract, and (3) have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board (42 Code of Federal Regulations 438.6(c)).

[163] 42 C.F.R. 438.6 and 42 United States Code 1396b(m).

[164] Under continuing law unchanged by the veto, each HIC must submit to the Superintendent of Insurance an annual report on its risk based capital (RBC) levels for

(2) Cause the Superintendent, in the case of a HIC with a parent company, to take actions requiring the use of the parent company's guaranty, which continuing law, unchanged by the veto, establishes as a condition of the HIC's receipt of a certificate of authority to do business in Ohio and as a duty of the parent company to provide funds as necessary to maintain the HIC's minimum net worth;[165]

(3) Negatively impact, in general, a HIC's financial solvency.

Risk-adjusted payment rates in Medicaid managed care

(R.C. 5111.165)

The Governor vetoed a provision that would have required ODJFS to develop a payment system based on a risk-adjusted rate structure for purposes of making payments to health insuring corporations under contract with ODJFS to manage the care of Medicaid recipients in the Covered Families and Children eligibility group. ODJFS would have been required to develop the system not later than January 1, 2009. The provision would have required ODJFS to consult with health insuring corporations regarding the methodology to be used in developing the risk-adjusted rate structure and would have required ODJFS to use all of the following:

(1) Medical information and other relevant encounter data necessary to obtain an accurate reflection of the utilization rates and unit costs of the health care services provided to Medicaid recipients in the Covered Families and Children category;

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the preceding calendar year. The RBC levels are calculated according to a formula that takes into account asset risk, credit risk, underwriting risk, and other business risks. If an HIC's total capital level falls below a certain level of risk based capital, the HIC is required to submit to the Superintendent an RBC plan specifying proposed corrective actions. If the RBC plan is satisfactory, the Superintendent must require the HIC to implement the plan. If the RBC plan or a revised plan is unsatisfactory, the Superintendent is authorized to take regulatory actions. (R.C. 1753.31 to 1753.43; Ohio Department of Insurance News Release: *Legislation Supported to Protect Consumers and Providers; Safeguard HMO Financial Solvency*, September 14, 2000.)

[165] Continuing law requires each HIC to maintain total admitted assets and a net worth in specified amounts based on the types of services the HIC is authorized to provide. For example, an HIC that is authorized to provide basic health services must maintain total admitted assets equal to at least 110% of the HIC's liabilities, without at any time having a net worth that is less than $1.2 million. (R.C. 1751.28.)

(2) A comprehensive risk adjustment tool, such as the chronic illness and disability payment system developed by the University of California, San Diego;

(3) Medicaid cost reports submitted by health insuring corporations;

(4) Historical and present information on the health insuring corporation enrollment and Medicaid eligibility of Medicaid recipients in the Covered Families and Children category;

(5) Actuarially sound assumptions regarding the administrative costs of the health insuring corporations and maintenance of their contingency and surplus financial reserves;

(6) A deviation factor that recognizes the impact of adverse claims for payment of health care services;

(7) Any other information recognized by the Society of Actuaries as relevant to the development of rates that are actuarially sound according to generally accepted actuarial principles and practices.

ODJFS would have been required to apply the risk-adjusted rate structure in accordance with an implementation schedule. In the first year after the rate structure was developed, 50% of each health insuring corporation's payments would have to have been risk-adjusted.[166] All of the payments would have to have been risk-adjusted in the second year and thereafter.

Monthly reports on Medicaid managed care recipients

(R.C. 5111.166)

The Governor vetoed a provision that would have required ODJFS, in implementing the Medicaid case management system, to provide health insuring corporations under contract with ODJFS to manage the care of Medicaid recipients a monthly report with information on the Medicaid recipients enrolled in the corporations who would no longer be eligible for Medicaid. The first report would have to have been provided not later than December 1, 2007. ODJFS would have been required to provide the reports in an electronic format and would have been required to consult with health insuring corporations to determine the most efficient method of providing the reports.

[166] The provision would have required ODJFS to develop, for purposes of making payments that are not risk-adjusted during the first year the risk-adjusted rate structure is implemented, a reasonable payment range under which the payments could be changed because of the rate structure's implementation.

Medicaid managed care payment rate for non-contracting providers of emergency services

(R.C. 5111.163)

In accordance with a Medicaid provision of the federal Deficit Reduction Act of 2005, continuing law provides that when an Ohio Medicaid recipient is enrolled in a managed care organization and receives emergency services from a health care provider that is not under contract with the organization, the provider must accept from the organization, as payment in full, not more than the amounts (less any payments for costs of medical education) that the provider could collect if the Medicaid recipient were not enrolled in a managed care organization. In effect, the provider is required to accept the Medicaid fee-for-service payment rate. "Emergency services," as defined in federal law, "are covered inpatient and outpatient services that are furnished by a qualified provider and are needed to evaluate or stabilize an emergency medical condition."

The requirement that the Medicaid fee-for-service payment rate be accepted formerly applied only to Medicaid-participating providers. The act extends the requirement to any person, institution, or entity that furnishes emergency services to a Medicaid recipient enrolled in a managed care organization, regardless of whether the health care provider has a Medicaid provider agreement.

Managed care pharmacy management utilization programs

(R.C. 5111.172(B))

With respect to a Medicaid-participating health insuring corporation (HIC), the act requires that ODJFS permit the HIC to develop and implement a pharmacy management utilization program. Through the program, the HIC may require that a Medicaid recipient receive prior authorization as a condition of obtaining a controlled substance by prescription.[167] The act specifies that the program may include processes for requiring Medicaid recipients at high risk for fraud or abuse involving controlled substances to have their prescriptions for those drugs filled by a pharmacy, medical provider, or health care facility designated by the program.

[167] Not all prescription drugs are controlled substances. Controlled substances are drugs that have been designated by state and federal law as having a high potential for abuse or addiction. The drugs are identified on lists, or schedules, numbered in descending order of their potential for abuse or addiction: Schedules I, II, III, IV, and V. (*R.C. Chapter 3719. and U.S. Department of Justice Drug Enforcement Administration, "Controlled Substances Security Manual*," http://www.deadiversion.usdoj.gov/pubs/manuals/sec/security.pdf.)

Dispensing for increases for generic drug prescriptions

Background--outpatient drug coverage under Medicaid

Outpatient drug coverage is an optional benefit that all state Medicaid programs have elected to include in their Medicaid benefit packages. State Medicaid programs do not directly purchase drugs; rather, they reimburse retail pharmacies that have entered into Medicaid provider agreements with the state's Medicaid agency for covered outpatient prescription drugs dispensed to Medicaid recipients.[168]

Background--federal upper limits (FULs)

Overview. For some generic drugs, referred to as "multiple source drugs," that are dispensed to Medicaid recipients on an outpatient basis, state Medicaid programs may receive federal matching funds for reimbursements only up to a maximum amount known as a "federal upper limit" or "FUL."[169] According to the Centers for Medicare & Medicaid Services (CMS), FULs are intended to assure that the federal government acts as a prudent buyer of drugs.[170]

Until January 1, 2007, federal law required that FULs be established for multiple source drugs for which there were three or more therapeutically equivalent products.[171] Beginning January 1, 2007, the Deficit Reduction Act of 2005 requires that FULs be established for multiple source drugs for which there are at least two therapeutically equivalent products.[172]

CMS determines the FUL for a multiple source outpatient drug by grouping a drug's therapeutically equivalent versions together and setting a FUL for each group. Each of a drug's therapeutically equivalent versions has several published

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[168] U.S. Government Accountability Office. *Letter to the Honorable Joe Barton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives* (GAO-07-239R "Medicaid Federal Upper Limits") (last visited May 29, 2007), available at <http://www.gao.gov/new.items/d07239r.pdf>, at p. 5.

[169] *Id.*

[170] Centers for Medicare & Medicaid Services. *Overview of Federal Upper Limits* (last visited April 17, 2007), available at <http://www.cms.hhs.gov/FederalUpperLimits/>.

[171] 42 U.S.C. 1396r-8(e)(4) (2000).

[172] 42 U.S.C. 1396r-8(e)(4), as amended by Section 6001(a)(1) of the Deficit Reduction Act of 2005.

prices associated with it, including the average wholesale price (AWP),[173] wholesale acquisition cost (WAC),[174] and direct price (DP).[175] All of these prices are published in each of three national drug pricing compendia--First DataBank, Medi-Span, and Red Book--which use different methods for determining these published prices. The lowest published price for a FUL group (that is, a drug) may be any one of these three prices, and this can vary depending on the FUL group.

FULs prior to January 1, 2007. Prior to January 1, 2007, CMS set a FUL by identifying a drug's therapeutic equivalent with the lowest price--either AWP, WAC, or DP--in any of the three national drug pricing compendia and multiplied that price by 150%.[176]

FULs on and after January 1, 2007. Section 6001 of the Deficit Reduction Act of 2005 requires that, effective January 1, 2007, FULs be set at 250% of the average manufacturer price (AMP) for the least costly therapeutic equivalent of each drug. AMP represents the average of prices paid to manufacturers by wholesalers for a drug distributed to the retail pharmacy class of trade, including retail pharmacies, and is typically less than any of a drug's published prices in the three pricing compendia.[177] In a December 2006 letter to the Chairman of the U.S. House of Representatives' Committee on Energy and Commerce, the U.S. Government Accountability Office (GAO) wrote that "[t]hough representing a potential cost saving measure for Medicaid, the change in FUL calculation methodology--using AMP instead of the lowest published price--has raised concerns among retail pharmacies serving Medicaid beneficiaries."[178]

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[173] "Average wholesale price" (AWP) is the average of the list prices that the manufacturer suggests wholesalers charge pharmacies. U.S. Government Accountability Office, *supra* note above at p. 6.

[174] "Wholesale acquisition cost" (WAC) is the manufacturer's list price for wholesalers or other direct purchasers before any rebates, discounts, allowances, or other price concessions. *Id*.

[175] "Direct price" (DP), as published by First DataBank, represents the manufacturer's published catalog or list price for a drug product to nonwholesalers. DP does not represent actual transaction prices and does not include prompt pay or other discounts, rebates, or reductions. *Id*.

[176] *Id*.

[177] *Id*. at p. 2.

[178] *Id*.

The GAO letter stated that drug manufacturers are required to report AMP data on their drugs to CMS. Because these data are not publicly available, retail pharmacies cannot determine what the relationship will be between AMP-based FULs and the prices the pharmacies pay to acquire these drugs (the pharmacy's "drug acquisition cost"). The GAO letter concludes that there will be an opportunity to determine the extent to which the AMP-based FULs facilitate both cost-effective Medicaid drug expenditures and adequate reimbursement to retail pharmacies only after AMP-based FULs are implemented in 2007.

Comparison: Calculation of FULs Before and On and After Jan. 1, 2007

FUL calculation before Jan. 1, 2007	FUL calculation effective Jan. 1, 2007
[lowest of average wholesale price (AWP), wholesale acquisition cost (WAC), or direct price (DP)[179] in any of the three drug compendia x 150%]	[average manufacturer price (AMP)* x 250%]

*As stated above, the U.S. Government Accountability Office (GAO) reports that AMP is typically less than any of a drug's published prices (AWP, WAC, or DP) in the three pricing compendia.

In addition, Section 6001(c) of the Deficit Reduction Act removes customary prompt pay discounts extended to wholesalers from the AMP calculation and requires manufacturers to report discounts to the U.S. Secretary of Health and Human Services. The Secretary is required, not later than July 1, 2007, to promulgate a regulation that clarifies the requirements for, and manner in which, AMP is determined, taking into consideration any recommendations the Inspector General must make in a report that was due not later than June 1, 2006.[180]

[179] See footnotes above for definitions of AWP, WAC, and DP.

[180] The rule was to be promulgated July 13, 2007 according to a CMS press release (*http://www.cms.gov/apps/media/press_release.asp*). However, the rule has not been published in the *Federal Register* as of July 16, 2007.

Fiscal impact analyses

(Sections 309.31.13(B) and 309.31.16(B))

The act requires the ODJFS Director to analyze the fiscal impact that the federal upper limits (FULs) established under federal law,[181] as amended by the Deficit Reduction Act of 2005 (DRA),[182] will have on pharmacists in fiscal years 2008 and 2009. The act requires the fiscal impact analysis for 2008 to be completed not later than 30 days after the effective date of the regulation the Secretary of Health and Human Services must promulgate, as discussed above, under Section 6001(c)(3) of the DRA. The fiscal impact analysis for 2009 must be completed not later than March 15, 2008. Each fiscal impact analysis must include a projection of the revenue a pharmacist is expected to lose during fiscal year 2008 or 2009 from each unit of multiple source drug[183] dispensed to a Medicaid recipient.

Medicaid dispensing fees

(Sections 309.31.13(C) and (D) and 309.31.16(C) and (D))

Notwithstanding continuing law's requirement concerning dispensing fees paid to pharmacists for each prescription dispensed, the act requires the Director, subject to the prohibition described below, to increase the dispensing fee to be paid to pharmacists with a valid Medicaid provider agreement for dispensing a multiple source drug to a Medicaid recipient in fiscal year 2008 or 2009. For each fiscal year, the act requires that the increase be made not later than ten days after the Director completes the fiscal impact analyses described above. The amount of the increase for each fiscal year must be determined in a manner that compensates pharmacists for the loss of revenue the Director projects pharmacists will, on average, incur during fiscal year 2008 or 2009. However, the act prohibits the total amount the Director expends to pay the increase in the dispensing fee for a fiscal year to exceed the total the Medicaid program is projected to save for that year as a result of the changes to the FULs made by the DRA.

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[181] 42 U.S.C. 1396r-8(e)(4).

[182] Pub. L. 109-171.

[183] Again, a "multiple source drug" is, in summary, a drug with available generic equivalents. The act defines the term consistent with the definition of this term in the DRA (codified at 42 U.S.C. 1396r-8(k)(7)).

Medical Care Advisory Council

(R.C. 5111.69)

Federal regulations require that each state participating in the Medicaid program establish a committee to advise the state's Medicaid agency about health and medical services.[184] ODJFS establishes this committee through a nonstatutory mechanism. The Governor vetoed the creation of the committee, known as the Medical Care Advisory Council, in statute, which would have consisted of the following 11 members:

(1) Three individuals representing health professions, including one or more individuals representing board-certified physicians, who are familiar with the medical needs of low-income population groups and with the resources available and required for their care, 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) Two individuals representing consumers' groups, including Medicaid recipients and consumer organizations such as labor unions, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

(3) Three individuals representing health insuring corporations that have entered into contracts with the ODJFS under the Medicaid program, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor;

(4) Two individuals representing the business community, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

(5) One individual representing county departments of job and family services, appointed by the Governor.

The members of the Council would have served at the pleasure of their appointing authorities. Vacancies were to be filled in the manner provided for original appointments. At its first meeting, the Council would have been required to organize by electing a chairperson from among its members and adopting bylaws for its operation. The bylaws must have included provisions specifying the length of the term a member may have served as chairperson.

[184] 42 C.F.R. 431.12.

The Council was to advise ODJFS about health and medical care services for purposes of the Medicaid program. ODJFS would have been required by the vetoed provision to grant the Council the opportunity to participate in Medicaid policy development and program administration.

Assisted Living Program

Background

The main operating budget bill of the 126th General Assembly (Am. Sub. H.B. 66) authorized the ODJFS Director to apply for a federal waiver to provide assisted living services under Medicaid to up to 1,800 individuals.[185] At the time of application for the Assisted Living Program, the individual must need an intermediate level of care as determined under ODJFS rules and either be a nursing home resident who is seeking to move to a residential care facility[186] but will remain in a nursing home if not for the Assisted Living Program or a participant in certain Medicaid waiver components who would move to a nursing facility if not for the Assisted Living Medicaid program.[187] The Medicaid waiver components are PASSPORT, the CHOICES program administered by the Department of Aging, or another Medicaid component administered by ODJFS.

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[185] "Assisted living services" is defined as home and community-based services providing personal care, homemaking, chores, attendant care, companion, medication oversight, and therapeutic social and recreational programming (R.C. 5111.89).

[186] "Residential care facility" (formerly "rest home") is defined as a home that provides either of the following:

> (1) Accommodations for seventeen 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, physical, or mental impairment.
>
> (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, physical, or mental impairment, and, to at least one individual, skilled nursing services as specified in the Revised Code. (R.C. 3721.01(A)(7) and 3721.011.)

[187] R.C. 5111.891.

Eligibility expansion

(R.C. 5111.891)

The act makes a resident of a residential care facility who has resided in a residential care facility for at least six months immediately before the date the individual applies for the Program eligible to participate in the Program.

Notification of eligible individuals

(R.C. 5111.894)

The act provides that when an area agency on aging determines that an individual residing in the area served by the agency is eligible for Medicaid and has been admitted to a nursing facility, the agency must notify the Long-Term Care Consultation Program administrator about the determination. The administrator must then determine whether the Assisted Living Program is appropriate for the individual and whether the individual would rather participate in the Assisted Living Program than continue to reside in the nursing facility. If the administrator determines the individual prefers the Assisted Living Program, the administrator must provide the individual or the individual's representative information on how to apply to the Assisted Living Program and whether there is a waiting list for the program.

Notice of Section 1115 waiver request

(R.C. 5111.94)

Federal law permits the United States Secretary of Health and Human Services to authorize a state to conduct an experimental, pilot, or demonstration project that in the Secretary's judgment is likely to assist in promoting the objectives of certain programs authorized by the Social Security Act, including the Medicaid program. To authorize a project, the Secretary issues a waiver of federal law that would otherwise be violated in implementation of the project. These waivers are often referred to as "Section 1115" waivers because the projects are authorized by Section 1115 of the Social Security Act.

The act prohibits the ODJFS Director from submitting a request to the United States Secretary of Health and Human Services for a Section 1115 Medicaid waiver unless the Director provides the Speaker of the House of Representatives and President of the Senate written notice of the Director's intent to submit the request at least ten days before the date the Director submits the request to the Secretary. The notice must include a detailed explanation of the Medicaid waiver the Director proposes to seek.

Money follows the person

(Section 309.30.70)

The act authorizes the Director of Budget and Management to do any of the following in support of any home and community-based services waiver program:

(1) Create new funds and account appropriation items to support and track funds associated with a unified long-term care budget;

(2) Transfer funds among affected agencies and adjust corresponding appropriation levels;

(3) Develop a reporting mechanism to show clearly how the funds are being transferred and expended.

Before any of the actions specified above may be taken, the act requires the Director of Budget and Management to present the proposed action to the Controlling Board for its review. The act prohibits the Director from implementing the proposed action unless it is approved by the Controlling Board.

Disability determination process

(Section 309.32.50)

The act requires the Rehabilitation Services Commission (RSC) and ODJFS to work together to reduce the duplication of activities performed by each agency and develop a systems interface so that medical information for mutual clients may be transferred between the agencies. RSC and ODJFS are to rely on the recommendations of the Disability Determination Consolidation Study Council.[188]

Cost outlier payments to children's hospitals for inpatient admissions

(Section 309.30.13)

Background

Ohio pays hospitals for Medicaid inpatient admissions under a prospective payment system that includes pre-established, fixed amounts for each admission

[188] The Disability Determination Study Council was created in Am. Sub. H.B. 66 of the 126th General Assembly, the biennial budget bill. The Council was to study the issues surrounding disability determinations and the feasibility of combining the responsibility for performing such determinations into a single agency.

based on diagnosis-related group (DRG) codes. ODJFS makes additional payments to hospitals, called "cost outlier payments" and "exceptional outlier payments," to supplement base DRG payments for certain high- and extraordinarily high-cost inpatient admissions. The outlier payment policy is intended to promote access to care for patients with more costly claims.[189] The reimbursement methodology for cost outlier and exceptional outlier cases is in an administrative rule adopted by the ODJFS Director, Ohio Administrative Code 5101:3-2-07.9.[190]

The act

Notwithstanding continuing law's cost outlier payment, the act, for fiscal years 2008 and 2009 only, requires the ODJFS Director to pay the full cost (100%) of Medicaid cost outlier claims for inpatient admissions at children's hospitals[191] that are less than $443,463 (adjusted annually for inflation), rather than just 85% of the cost, as under continuing law. The act requires that the practice of paying the full cost of such claims cease and revert back to 85% of the estimated cost when the difference between the total amount the Director has paid at full cost

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[189] U.S. Department of Health and Human Services, Office of Inspector General. *Review of Ohio's Medicaid Hospital Outlier Payments for State Fiscal Years 2000 through 2003* (March 2006) (last visited June 11, 2007), available at <http://oig.hhs.gov/oas/reports/region5/50400064.pdf>.

[190] In March 2006, the U.S. Department of Health and Human Services' Office of the Inspector General (OIG) issued a report summarizing the results of a review it completed of Ohio's Medicaid outlier payments for state fiscal years 2000 through 2003 (see footnote above). In that report, the OIG concluded that the state's "fixed ratio" method of computing inpatient cost outlier payments, in which the state used "outdated" fixed ratios to convert allowable billed charges to outlier payments, was unreasonable. Instead, the OIG recommended that the state incorporate the use of *hospital-specific* cost-to-charge ratios in Medicaid hospital outlier reimbursement policy. *Id.* ODJFS amended Ohio Administrative Code 5101:3-2-07.9 to reflect this recommendation. The amended rule became effective January 1, 2006.

[191] The act defines "children's hospital" as a hospital that primarily serves patients 18 years of age and younger and is excluded from Medicare prospective payment in accordance with federal regulations (42 U.S.C. 412.23(d)).

Under continuing law, the cost for an inpatient case is determined by multiplying the allowed charges for the claim by the hospital-specific cost-to-charge ratio. As directed by paragraph (A)(6) of O.A.C. 5101:3-2-07.9, ODJFS pays the full estimated cost (100%) for a case where the cost exceeds an amount ($443,463) that is adjusted annually for inflation. For cases where the cost does not meet or is equal to $443,463 adjusted annually for inflation, ODJFS pays 85% of the estimated cost.

for the outlier claims and the total amount the Director would have paid children's hospitals for such claims at the 85% level exceeds the sum of the state funds earmarked for the additional cost outlier payments in each fiscal year and the corresponding federal match.

In addition, the act requires the ODJFS Director, for fiscal years 2008 and 2009 only, to make supplemental Medicaid payments to children's hospitals for inpatient services under a program modeled after the program that ODJFS was required to create under Section 206.66.79 of Am. Sub. H.B. 66 of the 126th General Assembly for supplemental payments to children's hospitals when the difference between the total amount the Director has paid at full cost for Medicaid outlier claims and the total amount the Director would have paid at the 85% level for the claims does not require the expenditure of all state and federal funds earmarked for the additional cost outlier payments in the applicable fiscal year.

Further, the act prohibits the ODJFS Director from adopting, amending, or rescinding any rules that would result in decreasing the amount paid to children's hospitals for cost outlier claims.

Medicaid rates for nursing facilities

The formula for determining the rate nursing facilities are to be paid under the Medicaid program for providing covered services to recipients eligible for the services is included in the Revised Code. The formula is divided into several parts sometimes referred to as cost centers or price centers. The price centers in the nursing facility reimbursement formula are direct care costs, ancillary and support costs, tax costs, capital costs, and franchise permit fees.[192] A nursing facility is paid a rate for each price center; there is a separate formula for determining each rate. There is also a quality incentive payment included in the formula. A nursing facility's total rate is the sum of all of the rates and quality incentive payment.

Direct care costs include costs for nurses, direct care staff, medical directors, respiratory therapists, quality assurance, employee benefits, and other costs. A nursing facility's rate for direct care costs is determined in part by calculating a cost per case mix-unit for the nursing facility's peer group.[193]

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[192] See "***Nursing home and ICF/MR franchise permit fees***," above.

[193] Nursing facilities are placed in one of three peer groups as part of the process of determining their rate for direct care costs. Which peer group a nursing facility is placed in depends on the county in which it is located. For example, the first peer group consists of nursing facilities located in Brown, Butler, Clermont, Clinton, Hamilton, or Warren county. (R.C. 5111.20 and 5111.231.)

Ancillary and support costs include costs for activities, social services, pharmacy consultants, habilitation supervisors, incontinence supplies, food, laundry, security, travel, dues, subscriptions, and other costs not included with direct care costs or capital costs.[194]

Tax costs are costs for real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes.[195]

Capital costs means a nursing facility's costs of ownership, which is the actual expense incurred for (1) depreciation and interest on capital assets costing $500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) lease and rent of land, building, and equipment.[196]

The quality incentive payment is based on the number of points a nursing facility earns for such factors as having no health deficiencies on its most recent standard survey and a resident satisfaction above the statewide average. The mean quality incentive payment for fiscal year 2007, weighted by Medicaid days,[197] must be $3 per Medicaid day.[198]

ODJFS is required to adjust the rates determined under the formulas for direct care costs, ancillary and support costs, tax costs, and capital costs as directed by the General Assembly through the enactment of law governing Medicaid payments to nursing facilities.[199] ODJFS must also annually adjust the mean quality incentive payment starting in fiscal year 2008 by the same adjustment factors.[200]

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[194] R.C. 5111.20 and 5111.24.

[195] R.C. 5111.242.

[196] R.C. 5111.20 and 5111.251.

[197] "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. (R.C. 5111.20.)

[198] R.C. 5111.244.

[199] R.C. 5111.222.

[200] R.C. 5111.244.

FY 2008 Medicaid Reimbursement Rate for Nursing Facilities

(Section 309.30.20)

The act establishes adjustments to the fiscal year 2008 Medicaid rates for nursing facilities that have a valid Medicaid provider agreement on June 30, 2007, and a valid Medicaid provider agreement during fiscal year 2008. The cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support costs, rate for capital costs, and rate for tax costs are to be adjusted as follows:

(1) Increase the cost and rates by 2%.

(2) Increase the amount calculated above by another 2%.

(3) Increase the amount calculated above by 1%.

Instead of adjusting the mean quality incentive payment by the same adjustment factors, the act provides that the mean payment for fiscal year 2008 is to be $3.03 per Medicaid day and weighted by Medicaid days.

In addition to establishing the adjustments, the act provides that if a nursing facility's rate for fiscal year 2008 as determined using the adjustments is more than 102.75% of the rate the provider is paid for nursing facility services the facility provides at the end of fiscal year 2007, ODJFS must reduce the facility's fiscal year 2008 rate so that it is not more than 102.75% of its rate for the end of fiscal year 2007. If the rate determined using the adjustments is less than 100% of the rate the nursing facility is paid at the end of fiscal year 2007, ODJFS must increase its rate for fiscal year 2008 so that it is not less than 100% of its rate for the end of fiscal year 2007.

If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee for nursing facilities be reduced or eliminated, ODJFS is required to reduce the amount it pays nursing facilities for fiscal year 2008 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

The act requires that ODJFS implement these requirements in determining nursing facilities' fiscal year 2008 Medicaid rates notwithstanding anything to the contrary in the Revised Code governing nursing facilities' Medicaid rates.

FY 2009 Medicaid Reimbursement Rate for Nursing Facilities

(Section 309.30.30)

The act establishes similar adjustments for nursing facilities' fiscal year 2009 Medicaid rates. The cost per case mix-unit calculated as part of direct care costs, rate for ancillary and support costs, rate for capital costs, and rate for tax costs for nursing facilities that have a valid Medicaid provider agreement on June 30, 2008, and a valid Medicaid provider agreement during fiscal year 2008 are to be adjusted as follows:

(1) Increase the cost and rates by 2%.

(2) Increase the amount calculated above by another 2%.

(3) Increase the amount calculated above by 1%.

The mean quality incentive payment for fiscal year 2009 is to be $3.03 per Medicaid day and weighted by Medicaid days.

If the adjusted rate for a nursing facility is more than 102.75% of the Medicaid rate paid the nursing facility for the end of fiscal year 2008, its fiscal year 2009 rate is to be reduced so that it is not more than 102.75% of its rate for the end of fiscal year 2008. If the adjusted rate is less than 100% of the nursing facility's Medicaid rate for the end of fiscal year 2008, its fiscal year 2009 rate is to be increased so that it is not less than 100% of its rate for the end of fiscal year 2008.

As for fiscal year 2008, ODJFS must reduce nursing facilities' fiscal year 2009 rate as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee if the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated.

ODJFS is to implement the adjustment requirements notwithstanding anything to the contrary in the Revised Code governing nursing facilities' Medicaid rates.

Fiscal years 2008 and 2009 payments to certain nursing facilities

(Section 309.30.42)

H.B. 530 of the 126th General Assembly required the ODJFS Director to make payments to qualifying nursing facilities and intermediate care facilities for the mentally retarded for quarterly periods starting no sooner than January 1, 2006

and ending no later than January 1, 2007. These payments were made to certain new facilities, facilities that completed certain capital projects, activities, or renovations. All facilities were to cease being eligible for the payments on the earlier of July 1, 2007, or the date that the total amount of the payments equaled $10 million.

The act extends, with changes, these provisions for fiscal years 2008 and 2009 for nursing facilities. No facility is to receive a payment before it qualifies for the payment and all facilities are to cease being eligible for the payments on the earlier of July 1, 2009, or the date that the total amount of the payments equals $7 million. The ODJFS Director must monitor, on a quarterly basis, the payments to ensure that no more than a total of $7 million is spent. The payments for the last quarter that payments are made may be reduced proportionately as necessary to avoid spending more than $7 million.

Nursing facilities that are new in fiscal years 2008 and 2009

The first group of facilities that qualify for payments under the act are nursing facilities to which both of the following apply:

(1) The nursing facility, during fiscal year 2006, 2007, or 2008, obtained certification as a nursing facility from the Director of Health and began participating in the Medicaid program.

(2) An application for a certificate of need (CON) for the nursing facility was filed with the Director of Health before June 15, 2005.

The per diem payments to be made to a nursing facility in the first group of eligible facilities for fiscal year 2008 or 2009 are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2008 or 2009, depending on when the payments are made, and the lesser of the following:

(1) 88.65% of the nursing facility's cost of ownership[201] as reported on a three-month projected capital cost report divided by the greater of the number of

[201] The act provides that the term "cost of ownership" has the same meaning as in former law governing Medicaid payments to nursing facilities. Under that law, "cost of ownership" was defined as the actual expense incurred for (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) with certain exceptions, lease and rent of land, building, and equipment (former R.C. 5111.20).

inpatient days[202] the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have had during that period if its occupancy rate was 80%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

Nursing facilities that completed a capital project

The second eligible group consists of nursing facilities to which all of the following apply:

(1) The nursing facility does not qualify under the first group.

(2) The nursing facility, before June 30, 2008, completes a capital project for which a CON was filed with the Director of Health before June 15, 2005, and for which at least one of the following occurred before July 1, 2005, or, if the capital project is undertaken to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007: any materials or equipment for the capital project were delivered; preparations for the physical site of the capital project, including, if applicable, excavation, began; or actual work on the capital project began.

(3) The costs of the capital project are not fully reflected in the capital costs portion of the nursing facility's Medicaid reimbursement rate on June 30, 2005.

(4) The nursing facility files a three-month projected capital cost report with the ODJFS Director not later than 90 days after the later of March 30, 2006 or the date the capital project is completed.

The per diem payments to be paid to a nursing facility in the second eligible group in fiscal year 2008 or 2009 are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2008 or 2009, depending on when the payments are made, and the lesser of the following:

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[202] "Inpatient days" are all days during which a resident, regardless of payment source, occupies a bed in a nursing facility that is included in the nursing facility's certified bed capacity. Therapeutic or hospital leave days for which a Medicaid payment is made are considered inpatient days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days (R.C. 5111.20).

(1) 88.65% of the nursing facility's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if the nursing facility's occupancy rate was 95%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

Nursing facility that completes an activity

The third eligible group consists of nursing facilities that, before June 30, 2008, complete an activity to which all of the following apply:

(1) A request was filed with the Director of Health before July 1, 2005, for a determination of whether the activity is a reviewable activity and the Director determined that the activity is not a reviewable activity and, therefore, does not need a CON.

(2) At least one of the following occurred before July 1, 2005, or, if the nursing facility undertakes the activity to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007: any materials or equipment for the activity were delivered; preparations for the physical site of the activity, including, if applicable, excavation, began; or actual work on the activity began.

(3) The costs of the activity are not fully reflected in the capital costs portion of the nursing facility's Medicaid reimbursement rate on June 30, 2005.

(4) The nursing facility files a three-month projected capital cost report with the ODJFS Director not later than 90 days after the later of March 30, 2006 or the date the activity is completed.

The per diem payments to be paid to a nursing facility in the second eligible group in fiscal year 2008 or 2009 are to equal the difference between the capital costs portion of the nursing facility's Medicaid reimbursement per diem rate for fiscal year 2008 or 2009, depending on when the payments are made, and the lesser of the following:

(1) 88.65% of the nursing facility's cost of ownership as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if the nursing facility's occupancy rate was 95%.

(2) The maximum capital per diem rate in effect for fiscal year 2005 for nursing facilities.

Nursing facility that completes a renovation

The fourth and last eligible group consists of nursing facilities that, before June 30, 2007, completed a renovation[203] to which all of the following apply:

(1) The Director of Job and Family Services approved the renovation before July 1, 2005.

(2) At least one of the following occurred before July 1, 2005, or, if the facility undertook the renovation to comply with rules adopted by the Public Health Council regarding resident room size or occupancy, before June 30, 2007: any materials or equipment for the renovation were delivered; preparations for the physical site of the renovation, including, if applicable, excavation, began; or actual work on the renovation began.

(3) The costs of the renovation are not fully reflected in the capital costs portion of the facility's Medicaid reimbursement rate on June 30, 2005.

(4) The facility files a three-month projected capital cost report with the ODJFS Director not later than 90 days after March 30, 2006 or the date the renovation is completed.

The per diem payments to be made to a nursing facility in the fourth group are to equal 85% of the nursing facility's capital costs for the renovation as reported on a three-month projected capital cost report divided by the greater of the number of inpatient days the nursing facility is expected to have during the period covered by the projected capital cost report or the number of inpatient days the nursing facility would have during that period if its occupancy rate was 95%.

Quarterly payments

The per diem payments are to be made for quarterly periods to qualifying nursing facilities. Any per diem payments to be made for a quarter ending before July 2008 is to be made not later than September 30, 2008. Any per diem

[203] The act provides that "renovation" has the same meaning as in former state law governing Medicaid payments to nursing facilities. Under that law, "renovation" was defined as the betterment, improvement, or restoration of a nursing facility beyond its current functional capacity through a structural change that costs at least $500 per bed. "Renovation" did not include construction of additional space for beds to be added to a facility's licensed or certified capacity (former R.C. 5111.20).

payments to be made for a quarter beginning after June 2008 is to be made not later than three months after the last day of the quarter for which the payments are made. No payment is to be made for a quarter that a facility does not have a valid Medicaid provider agreement. The payments are to be in addition to a facility's fiscal year 2008 or 2009 Medicaid payments calculated under the act.

A quarterly per diem determined for a nursing facility under the act is to be multiplied by the number of Medicaid days[204] the facility has for the quarter for which the payment is made.

Payments to continue after a change of operator

A change of operator is not to cause the payments to a nursing facility to cease. Continuing law provides that a change of operator occurs when an entering operator becomes the operator of a nursing facility in the place of the exiting operator. 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 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 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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[204] "Medicaid days" are all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's certified capacity. Therapeutic or hospital leave days for which a Medicaid 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 (R.C. 5111.20).

No appeals

The act specifies that determinations that the ODJFS Director makes under this part of the act are not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

Rules

The act authorizes the ODJFS Director to adopt rules as necessary to implement this part of the act. If adopted, the rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The act provides that the Director's failure to adopt the rules does not affect the requirement that the per diem payments be made.

Medicaid rates for intermediate care facilities for the mentally retarded

As with nursing facilities, the Revised Code establishes the formula for determining the rate intermediate care facilities for the mentally retarded (ICFs/MR) are to be paid under the Medicaid program for providing Medicaid-covered services to Medicaid recipients eligible for the services. The formula for ICFs/MR is similar to the formula for nursing facilities in that it too is divided into several price centers. One of the price centers for ICFs/MR is direct care costs which includes costs for nurses, direct care staff, medical directors, respiratory therapists, quality assurance, program directors, social services staff, activities staff, and other costs.

Offsite day programming part of ICFs/MR's direct care costs

(R.C. 5111.20)

The act adds offsite day programming to the costs included in ICFs/MR's direct care costs. According to an official with ODJFS, this is related to the repeal by Am. Sub. H.B. 66 of the 126th General Assembly (the biennial budget act) of a requirement that the Medicaid program cover habilitation center services. The system by which the Medicaid program paid for habilitation center services was often referred to as the community alternative funding system (CAFS). H.B. 66 permitted the Department to increase the Medicaid 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 CAFS.[205] Rather than repeating such authority for fiscal years 2008 and 2009, the act adds offsite day programming to ICFs/MR's direct care costs.

[205] Section 206.66.27 of Am. Sub. H.B. 66 of the 126th General Assembly.

FYs 2008 and 2009 Medicaid rates for ICFs/MR

(Section 309.30.40)

The act establishes limitations on the fiscal years 2008 and 2009 Medicaid rates for ICFs/MR. Medicaid rates paid to ICFs/MR are to be subject to the following caps:

(1) For fiscal year 2008, the mean total per diem rate for all ICFs/MR as calculated under codified sections of state law governing Medicaid payments to ICFs/MR is not to exceed $266.14 as weighted by Medicaid days[206] and calculated as of July 1, 2007.

(2) For fiscal year 2009, the mean total per diem rate for all ICFs/MR as so calculated is not to exceed $271.46 as weighted by Medicaid days and calculated as of July 1, 2008.

If the mean total per diem rate for all ICFs/MR for fiscal year 2008 or 2009, weighted by Medicaid days and calculated as of the first day of July of the calendar year in which the fiscal year begins, exceeds the cap, the Department is required to reduce the total per diem rate for each ICF/MR by a percentage that is equal to the percentage by which the mean total per diem rate exceeds the cap. Subsequent to any reduction required because of the caps, an ICF/MR's Medicaid rate is not to be subject to any adjustments authorized by codified law governing Medicaid payments to ICFs/MR during the remainder of the year.

Increase in Medicaid rates for PASSPORT services

(Section 309.30.45)

The PASSPORT program is a Medicaid-funded waiver program under which home and community-based services are provided to individuals age 60 or older who would otherwise need nursing facility services. The Choices program is a Medicaid-funded waiver program that allows certain eligible PASSPORT participants to directly employ service providers to provide them with community-based care. The Department of Aging administers the program, through an interagency agreement with ODJFS.

[206] "Medicaid days" is defined as all days during which a resident who is a Medicaid recipient occupies a bed in an ICF/MR 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 ICF/MR's per resident per day rate paid for those days.

The ODJFS Director has adopted rules governing the rates paid to providers who provide home and community-based services under the PASSPORT program and has by administrative rule established a procedure for determining the maximum expenditure limit for any 12-month service plan available to participants under the Choices program. Choices participants, within the limits of the service plan, negotiate with providers for community-based care.

The act requires the ODJFS Director to amend the rules governing PASSPORT and the Choices program reimbursement rates as necessary to accomplish the following:

(1) Increase, for fiscal year 2008, the Medicaid reimbursement rates for services provided under the PASSPORT and Choices programs to rates that result in amounts 3% higher than the amounts resulting from the rates in effect June 30, 2007.

(2) Increase, for fiscal year 2009, the Medicaid reimbursement rates for services provided under the PASSPORT and Choices program to rates that result in amounts 3% higher than the amounts resulting from the rates in effect June 30, 2008.

Medicaid coverage of chiropractic services for adults

(Section 309.30.60)

For the period January 1, 2008 to June 30, 2009, the act requires the Medicaid program to cover chiropractic services for Medicaid recipients age 22 or older in an amount, duration, and scope the ODJFS Director is to specify in rules. However, coverage is limited to 15 visits per recipient per fiscal year.

VII. Hospital Care Assurance Program

Delay of Termination of Hospital Care Assurance Program

(Sections 621.05 and 621.06)

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 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 will terminate on October 16, 2007. The act delays the termination date of the program until October 16, 2009.

LEGAL RIGHTS SERVICE (LRS)

- Limits access by LRS to records held by community residential facilities and records of contract agencies of county boards of mental retardation and developmental disabilities and boards of alcohol, drug addiction, and mental health services to when consent to that access has been granted or certain circumstances apply.

- Provides that individuals represented by LRS are its clients.

- Requires LRS to maintain information confidentially unless requested by an authorized person, and provides that communications between LRS personnel and agents and LRS clients are privileged.

- Authorizes LRS to apply to the Franklin County Court of Common Pleas to compel the production or authentication of requested documents on the refusal of any person to produce or authenticate any requested documents.

- Requires the Administrator of LRS to be an attorney admitted to practice law in Ohio.

- Creates the Program Income Fund in the state treasury for the support of Legal Rights Service programs.

Background

The Ohio Legal Rights Service (LRS) is Ohio's designated protection and advocacy system and client assistance program for children and adults with mental disabilities. LRS is authorized and funded through federal law. For Ohio to receive any federal funds for services to the mentally disabled, it is required by federal law to have a protection and advocacy system. Ohio created the Legal Rights Service as the state's protections and advocacy system.[207]

[207] 42 U.S.C. 10801 et seq. and 42 U.S.C. 15041 et seq.; R.C. 5123.60.

Records and Information Available to the Legal Rights Service

(R.C. 5123.60 and 5123.602)

Federal and state law require that a state's advocacy system have access to certain records maintained by providers of services to a mentally ill person, mentally retarded person, or developmentally disabled person. Continuing law, partially changed by the act, provides that the LRS administrator, staff, and attorneys designated by the administrator must have ready access to the following provider resources or individuals:

(1) During normal business hours and other reasonable times, all provider records relating to expenditures of state and federal funds or to the commitment, care, treatment, and habilitation of a mentally ill person, mentally retarded person, or developmentally disabled person represented by LRS, and all service records maintained by state departments; institutions; hospitals; *community residential facilities*; boards of alcohol, drug addiction, and mental health services; county boards of MR/DD; *contract agencies of those boards*; or any other entity or person providing services to a mentally ill person, mentally retarded person, or developmentally disabled person.

(2) Any provider records maintained in computerized data banks of any entity providing services to a mentally ill person, mentally retarded person, or developmentally disabled person.

(3) During normal working hours, personnel of the departments, facilities, boards, agencies, institutions, hospitals, or other entity providing services to a mentally ill person, mentally retarded person, or developmentally disabled person.

(4) At any time, any mentally ill person, mentally retarded person, or developmentally disabled person who is detained, hospitalized, or institutionalized.

The act limits LRS access to records held by community residential facilities and records of contract agencies of county boards of mental retardation and developmental disabilities and boards of alcohol, drug addiction, and mental health services. LRS may only access these records under one of three circumstances: (1) with the consent of the person, including when the person is a minor or has been adjudicated incompetent, (2) with the consent of the person's guardian, if any, or the parent if the person is a minor, and (3) without consent, if the person is unable to consent for any reason, and the guardian of the person, if any, or the parent of the minor, has refused to consent or has not responded to a

request for consent and either a complaint regarding the person has been received by LRS or LRS has determined that there is probable cause to believe that the person has been subjected to abuse or neglect.

A parallel change is made to the sections providing the ombudsperson with access to resources or individuals. The act limits the access of the ombudsperson to make necessary inquiries and obtain information it considers necessary to situations where the ombudsperson has received a complaint and is conducting an investigation. However, the ombudsperson is held to the same limitations regarding records held by community residential facilities and records of contract agencies of county boards of mental retardation and developmental disabilities and boards of alcohol, drug addiction and mental health services as placed on the LRS.

Client status and confidentiality of Legal Rights Service communications

(R.C. 5123.60)

The act specifies that any mentally retarded person, mentally disabled person, mentally ill person, or any person that the LRS determines is eligible for LRS services, if formally represented by LRS, is a client of LRS.

Continuing law, partially changed by the act, generally requires that relationships between personnel and the agents of LRS and its clients are fiduciary relationships, and all communications are confidential, as if between attorney and client. The act provides that these communications are instead "privileged" as if between attorney and client. The act also specifies that all records received or maintained by LRS in connection with any investigation, representation, or other activity are confidential and must not be disclosed except as authorized by the person represented by LRS or, subject to any privilege, a guardian of the person or parent of the minor.

Subpoena power of the Legal Rights Service

(R.C. 5123.60)

Continuing law allows LRS, on the order of the administrator, with the approval by an affirmative vote of at least four members of the LRS Commission, to compel by subpoena the appearance and sworn testimony of any person the administrator reasonably believes may be able to provide information or to produce any documents, books, records, papers, or other information necessary to carry out its duties. The act strengthens this power by providing that on the refusal of any person to produce or authenticate any requested documents, LRS may apply to the Franklin County Court of Common Pleas to compel the production or authentication of requested documents. If the court finds that failure to produce or

authenticate any requested documents was improper, the court may hold the person in contempt as in the case of disobedience of the requirements of a subpoena issued from the court, or a refusal to testify in the court.

Administrator of the Legal Rights Service

(R.C. 5123.60)

Former law required the LRS administrator to be a person who had special training and experience in the type of work with which LRS is charged. If the administrator was not an attorney, the administrator was required to seek legal counsel when appropriate. The act instead requires the administrator of LRS be an attorney admitted to practice law in Ohio.

Program Income Fund for Legal Rights Service programs

(R.C. 5123.605)

The act creates the Program Income Fund in the state treasury. Revenue generated from settlements, gifts, donations, and other sources of LRS program income must be credited to the Fund. The Fund must be used to support LRS programs for purposes from which the income was derived or for the general support of LRS programs.

LEGISLATIVE SERVICE COMMISSION (LSC)

- Requires the staff of the Legislative Service Commission to study the feasibility and potential results of establishing state incentives for local entities to assume control of state historical sites and to report the findings to the Commission not later than six months after the provision's effective date.

- Repeals the requirement that the Legislative Service Commission submit to the General Assembly, in each even-numbered year, a report (commonly know as the S.B. 30 report) estimating the costs to school districts of each education law and administrative rule that became effective during the preceding two years.

Study of state incentives for local entities to assume control of state historical sites

(Section 753.20)

The act requires the staff of the Legislative Service Commission to study the feasibility and potential results of the state's offering incentives for local entities, including municipal corporations, counties, townships, local historical societies, and regional authorities, to assume control of state historical sites. The incentives to be studied must include the establishment of tax credits, the contribution of capital dollars, and the creation of an endowment-matching program. The study must focus on the cost and funding aspects of the incentives that are studied. In addition, the study must attempt to determine the potential results of providing each incentive at varying levels. Not later than six months after the effective date of the provision, the staff must report its findings to the Commission.

S.B. 30 report

(R.C. 103.141 (repealed))

The act repeals the requirement that the fiscal staff of the Legislative Service Commission submit to the General Assembly in October of each even-numbered year an estimate of the costs to school districts of each education law and administrative rule that became effective during the preceding two years.

LOCAL GOVERNMENT (LOC)

- Provides civil immunity to a political subdivision and its employees in connection with services performed on behalf of another political subdivision.

- Authorizes counties with a population exceeding 1.2 million, or exceeding 400,000 wherein the population of the largest city comprises more than one-third of the population in the counties, to purchase, lease, construct, enlarge, improve, rebuild, equip, or furnish a convention center by various specified means.

- Clarifies that sales tax revenue bonds are not general obligation bonds supported by general taxing powers.

- Increases the threshold for expenditures of a joint fire and ambulance district (other than for employee salaries) above which competitive bidding procedures apply from $25,000 to $50,000.

- Requires boards of township trustees to use competitive bidding when purchasing more than $50,000 of equipment or property for a fire department that is not part of a fire district.

- Permits a township to agree to grant or lend township general fund money to a political subdivision supplying water, sanitary sewerage, or storm water drainage within the township.

- Permits townships to use the proceeds from selling cemetery lots to maintain and beautify cemetery grounds.

- Requires the approval of the Secretary of Defense of the United States before territory lying within the boundaries of any United States military base may be annexed to or merged with a municipal corporation under any annexation or merger procedure.

- Clarifies that law enforcement officers from one jurisdiction may enforce state traffic laws on all portions of a street or highway that is located in an adjoining jurisdiction when the portion of the street or highway is located immediately adjacent to the boundaries of the two jurisdictions, provides that all fines collected from persons who are charged by law enforcement officers from the adjoining jurisdiction with violations of state traffic laws on such a street or highway are to be paid to the adjoining jurisdiction, and defines "portion of any street or highway" for purposes of the arrest law.

- Increases from three to five the number of board members of a regional arts and cultural district created by the exclusive action of a county with a population of 500,000 or more.

- Allows a parent who is subject to an order allocating parental rights and responsibilities, or in relation to whom an action to allocate parental rights and responsibilities is pending, to apply to the court for a hearing to expedite an allocation or modification proceeding if either parent is ordered to active military service in the uniformed services.

- Increases the maximum repayment period from 10 to 30 semiannual installments that a board of county commissioners may allow landowners for payment of an assessment under the Single County Ditch Law, and increases the maximum repayment period from 16 to 30 semiannual installments for bonds that are sold for an improvement under that Law.

- Requires notification of the maintenance assessment of the Muskingum Watershed Conservancy District that is scheduled to begin collection in 2008 to be provided to persons who own property within the territorial boundaries of the District that is a commercial or industrial parcel subject to assessment.

- Authorizes the by-laws of a regional council of governments the members of which include at least eight counties to allow proxy attendance and voting at council meetings.

- Creates a new category of public nuisance: "public nuisance in subsidized housing."

- Defines subsidized housing as a property with more than four units that is subsidized by one of the specified federal housing programs.

- Requires a judge to apply federal standards and federal interpretations of those standards when determining whether subsidized housing is a public nuisance.

- Prohibits a judge from ordering the sale of subsidized housing that is a public nuisance unless all federal contracts and procedures are followed and the purchaser agrees to continue to operate the property as subsidized housing.

Scope of civil immunity for a political subdivision

(R.C. 2744.02)

Under continuing law, a political subdivision and its employees may assert qualified immunities and defenses to liability in a civil action for injury, death, or loss to person or property allegedly caused by the political subdivision or employee in connection with the governmental or propriety functions of the political subdivision. The act states that these same qualified immunities and

defenses also are available to a political subdivision and its employees in connection with any governmental or propriety function performed by the political subdivision and its employees on behalf of another political subdivision.

Additional authority for certain counties to establish and provide local funding options for constructing and equipping a convention center

(R.C. 307.695(F))

Ongoing law authorizes a board of county commissioners to enter into an agreement with a convention and visitors' bureau in the county under which the bureau agrees to construct and equip a convention center in the county with revenue from the lodging tax the board levies and that the bureau receives for this purpose. If the agreement's terms so provide, the board of county commissioners may acquire and lease real property to the bureau as the site of the convention center.

Ongoing law also authorizes a board of county commissioners in a county with a population exceeding 1.2 million to establish and provide local funding options in addition to that described above for constructing and equipping a convention center.

The act extends this additional authority to a board of county commissioners in a county with a population greater than 400,000 wherein the population of the largest city comprises more than one-third of that county's population, and also specifies that both sets of such counties may purchase, lease, lease-purchase (including an option to purchase), construct, enlarge, improve, rebuild, equip, or furnish a convention center, in lieu of providing "local funding options."

Sales tax revenue bonds

(R.C. 133.081)

Continuing law authorizes counties levying a sales and use tax for general revenue to issue "sales tax supported bonds" to raise money, in anticipation of future sales tax collections, to finance permanent improvements. The law states that the bonds do not represent a pledge of the faith and credit of the issuer.

The act clarifies that sales tax supported bonds are not general obligation bonds and that holders of these bonds do not have the right to force the issuing political subdivision to levy property taxes to service the bond debt.

Bid threshold for joint fire and ambulance districts

(R.C. 505.376)

When any expenditure of a joint fire and ambulance district, other than for employee salaries, exceeds $25,000, the contract must be in writing and be the subject of prescribed competitive bidding procedures. The act increases this threshold from $25,000 to $50,000.

Board of township trustees let contracts for fire-fighting purposes in excess of $50,000 by competitive bidding

(R.C. 505.37(A))

A board of township trustees may purchase, lease, lease with an option to purchase, or otherwise provide equipment and property necessary to guard against the occurrence of fires and protect the property and lives of citizens against damage and accidents. Under former law, expenditures by the board of township trustees for a fire department that is not part of a fire district were not subject to competitive bidding requirements. The act requires that contracts for the purchase of fire apparatus, mechanical resuscitators, other equipment, appliances, materials, fire hydrants, buildings, or fire-alarm communications equipment or services estimated to exceed $50,000 be let by competitive bidding.

When competitive bidding is required, the board is required to advertise the date, time, and place where the township clerk will publicly read the bids for not less than two nor more than four consecutive weeks in a newspaper of general circulation within the township. The board may extend the date, time, and place for opening the bids to a later date, but only if, not later than 96 hours before the original time and date fixed for opening the bids, oral or written notice of the change has been given to all persons who have received or requested specifications for the bidding.

The board may reject all bids, or accept the lowest and best bid. Successful bidders for the construction, demolition, alteration, repair, or reconstruction of improvements must meet the bid guaranty requirements of continuing law.

Townships granting or lending money to political subdivisions for water, sanitary sewerage, or storm water drainage

(R.C. 505.705 and 6119.06)

Former law provided that a board of township trustees may appropriate township general revenue fund money to another political subdivision that has authority to provide water or sewerage services to the township. The act specifies

instead that a board of township trustees may agree to appropriate, and may agree to grant or lend, township general revenue fund money to another political subdivision that has authority to provide water, sanitary sewerage, or storm water drainage within the township. The money is to be used by the other political subdivision to pay for the planning of or actual costs, fees, debt retirement, or other expense (including administrative or professional fees) incurred in supplying one or more of these purposes in the township, or for the planning of or actual construction, maintenance, repair, or operation of water, sanitary sewerage, or storm water drainage within the township. A board of township trustees that grants or lends money to another political subdivision for one or more of these purposes is required to state expressly the terms of the grant or loan agreement in a written memorandum. (R.C. 505.705.)

The act specifically authorizes the board of trustees of a regional water and sewer district to enter into agreements for grants or for the receipt and repayment of loans from a board of township trustees under the provisions described above (R.C. 6119.06(Q)).

Township cemetery lot proceeds useable for cemetery maintenance and beautification

(R.C. 517.08)

Under continuing law, a board of township trustees is required to use the proceeds arising from the sale of township cemetery lots to improve and embellish the cemetery. The act adds maintenance and beautification to the purposes for which the proceeds can be used.

Military bases: Annexation

(R.C. 709.01; Section 815.03)

Former law prohibited the annexation of territory lying within the boundaries of a military base (or similar installation used for housing armed forces and as a center for military operations) under R.C. 709.01 to 709.21 unless the United States Secretary of Defense approves the annexation.

Effective immediately, the act extends the approval requirement to all mergers and annexations involving such territory regardless of the statute under which the merger or annexation is authorized. (Also, see "***Air Force bases: Municipal income taxation***" under the Department of Taxation.)

Prosecutions for violations of state law in Greene County

(R.C. 1901.34)

Under prior law, the Greene County prosecuting attorney could, with the concurrence of the Greene County board of county commissioners, prosecute in the Fairborn Municipal Court all violations of state law arising within the unincorporated areas of Bath and Beavercreek Townships in Greene County and prosecute in the Xenia Municipal Court all violations of state law arising within the unincorporated areas of Ceasarcreek, Cedarville, Jefferson, Miami, New Jasper, Ross, Silvercreek, Spring Valley, Sugarcreek, and Xenia townships in Greene County. The act modifies this provision to authorize the Greene County board of county commissioners to provide for the prosecution of all violations of state law arising within the territorial jurisdiction of any municipal court located in Greene County.

Enforcement of traffic laws on streets located immediately adjacent to political subdivision boundaries and distribution of fine money

(R.C. 2935.03 and 4513.35)

Continuing law permits the following law enforcement officers to arrest and detain, until a warrant can be obtained, any person found violating any of a number of specified Revised Code sections or chapters, including R.C. Chapters 4511. (motor vehicle traffic laws) and 4513. (motor vehicle equipment laws) on the portion of any street or highway that is located immediately adjacent to the boundaries of their respective jurisdictions: (a) a county sheriff or deputy sheriff, (b) a member of the police force of a township police district or joint township police district or a township constable, but such member or constable may not make an arrest on a state highway that is included as part of the interstate system if the population of the township that created the township police district or the townships that created the joint township police district served by the member's police force or of the township served by the township constable is 60,000 or less, (c) a police officer or village marshal appointed, elected, or employed by a municipal corporation, and (d) a peace officer of the Department of Natural Resources or an individual designated to perform law enforcement duties under the laws pertaining to township park districts, park districts, and conservancy districts. The act provides that a "portion of any street or highway" means "all lanes of the street or highway irrespective of direction of travel, including designated turn lanes, and any berm, median, or shoulder."

The language that specifies the violations that a law enforcement officer from an adjoining jurisdiction may enforce on such a street or highway does not include any reference to "municipal ordinances that are substantially equivalent to

any of those Revised Code provisions or chapters" or other words of similar import. Therefore, a law enforcement officer from an adjoining jurisdiction may enforce only the specified Revised Code provisions on the portion of the street or highway that is located on the boundary and not any municipal ordinance. Generally, all fines collected for violations of Chapters. 4511. and 4513. are paid into the county treasury to the credit of the county's general highway maintenance and repair fund. A later provision of that section attempts to direct the fines collected from tickets issued under R.C. 2935.03(E)(3) (clause (c) in the preceding paragraph) to the adjoining jurisdiction, but it refers to "violations of municipal ordinances." The act corrects this inconsistency by providing that the adjoining jurisdiction is to receive fines collected not only for violations of municipal ordinances but also "for violations of one of the sections or one of the provisions of one of the chapters of the Revised Code listed . . . ." The result is that if a law enforcement officer from an adjoining jurisdiction issues a ticket to a person who commits a violation on a portion of a street or highway that is located in another jurisdiction and that forms the boundary between the two jurisdictions, charging the person with a violation of the specified provision of the Revised Code, the fine money is deemed to be collected and to arise from an arrest made within the adjoining jurisdiction and is to be distributed to the adjoining jurisdiction.

Membership of board of trustees of a regional arts and cultural district created by exclusive action of a county with a population of 500,000 or more

(R.C. 3381.04)

Under continuing 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. A district may be created by one of two alternative procedures in R.C. 3381.03 (not in the act) and R.C. 3381.04. The latter procedure applies only to counties with a population of 500,000 or more. Under that large county alternative, the board of county commissioners appoints a three-member board of trustees to serve as the district's governing board. The act increases, from three to five, the number of board members to be appointed by the board of county commissioners under the large county alternative.

Child custody and military service

(R.C. 3109.04 and 3109.041)

Under continuing law, in any divorce, legal separation, or annulment proceeding, or in any proceeding regarding the allocation of parental rights and

responsibilities (e.g. when the parents of a child are not married),[208] the court is required to allocate parental rights and responsibilities either through a sole or shared parenting order. Once the court establishes a sole or shared parenting order, that order may be modified by (1) the court, if the court determines that a change in circumstances of the child or either of the parents has occurred and modification is in the best interest of the child, or (2) the parents, under certain circumstances.

The act requires a parent who is subject to an order allocating parental rights and responsibilities, or in relation to whom an action to allocate parental rights and responsibilities is pending, and who is ordered to active military service in the uniformed services[209] to notify the other parent who is subject to the order, or in relation to whom the case is pending, of the order to active military service within three days of receiving the order. The act then allows either parent to apply to the court for a hearing to expedite the allocation or modification proceeding. The application must include the date on which the active military service begins. The court must then schedule a hearing upon receipt of the application and hold the hearing not later than 30 days after receipt of the application. However, the court must give the case calendar priority and handle the case expeditiously if exigent circumstances exist in the case.

The act also prohibits the court from modifying a prior decree allocating parental rights and responsibilities unless the court determines that there has been a change in circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that modification is necessary to serve the best interest of the child. The court may consider active military service in the uniformed services in determining whether a change in circumstances exists under Child Custody Law and must make written findings of fact to support a modification. However, after the parent's active military service has been terminated, and upon application by either parent, the court may modify a prior decree after hearing testimony and making written findings of fact to support a modification. Additionally, the court may issue a temporary order for the duration of the parent's active military service.

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[208] In Ohio, "allocation of parental rights and responsibilities" is commonly referred to as "custody."

[209] "Uniformed services" means (1) the United States armed forces, (2) the Army National Guard and Air National Guard when engaged in active duty for training, or (3) the commissioned corps of the United States Public Health Service (R.C. 3109.04(J)(5)).

Maximum payment period for single county ditch assessments and bonds sold for single county ditch improvements

(R.C. 6131.23)

Law largely retained by the act requires a board of county commissioners to determine the number of semiannual installments in which landowners must pay an assessment for an improvement under the Single County Ditch Law, but at least two semiannual installments generally must be allowed. If the cost of an improvement is more than $500, the board may allow landowners to pay the assessment in more than two installments. When assessments are payable in installments and county general funds are used to pay for the improvement, the assessment cannot exceed 10 semiannual installments. The act increases the maximum payment period to 30 semiannual installments.

Under law largely retained by the act, when assessments are levied and bonds are issued to finance the construction of an improvement under the Single County Ditch Law, the bonds may have a repayment period (i.e. maturity) of up to eight years, which corresponds with 16 semiannual installment payments. The act increases the maximum repayment period to 30 semiannual installments for bonds that are sold for such an improvement.

Muskingum Watershed Conservancy District: notification of maintenance assessments

(Section 757.20)

The act requires the board of directors of the Muskingum Watershed Conservancy District to prepare written notification of the maintenance assessment to be levied by the District under continuing law that is scheduled to begin collection in calendar year 2008. The notification must include a statement that the District intends to levy the maintenance assessment and must include, with respect to each person to whom notification is required to be sent under the act, an indication of the amount of the maintenance assessment that is applicable to that person. The board of directors must send the required notification to each person who owns property within the territorial boundaries of the District that is a commercial or industrial parcel subject to assessment. The notification must be sent by United States mail not later than 120 days prior to the date on which the maintenance assessment is scheduled to begin collection. The act defines "commercial or industrial parcel subject to assessment" for that purpose to mean a parcel that is classified by a county auditor as commercial or industrial according to the county auditor's use codes as listed in the Conservancy Appraisal Record of the Muskingum Watershed Conservancy District.

Proxy attendance and voting at meetings by members of certain regional councils of government

(R.C. 167.04)

Continuing law requires a regional council of governments[210] to adopt by-laws, by a majority vote of its members, designating the council's officers and method of their selection, creating a governing board that may act for the council as provided in the by-laws, providing for the conduct of the council's business, and providing for the appointment of a fiscal officer (R.C. 167.04(A) and (B)).

The act authorizes the by-laws of a regional council of governments the members of which include at least eight counties to include a provision allowing member attendance and voting at council meetings either in person or by proxy (R.C. 167.04(C)). Such a provision is an exception to the Open Meetings Act, which requires that a member of a public body be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting (R.C. 121.22(C), not in the act).

Public nuisance in subsidized housing

(R.C. 3767.41)

Continuing law provides measures for dealing with a property that is a public nuisance which include procedures for filing a complaint regarding the property, a court proceeding that includes a judge's determination of whether the property is a public nuisance, and options for abatement of the nuisance. A public nuisance proceeding is initiated by a municipal corporation, neighbor, tenant, or nonprofit corporation filing a civil complaint with a court. Continuing law contains definitions of a public nuisance and standards for a judge to apply in determining whether the property is a nuisance. If a property is a public nuisance, the judge may issue an injunction ordering the owner to abate the nuisance, appoint a receiver, or order the sale of the property.

[210] Continuing law authorizes the governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions to enter into an agreement with each other to establish a regional council consisting of these government units (R.C. 167.01, not in the act). A regional council of governments generally is authorized to study governmental problems common to its members and to promote cooperative arrangements and coordinate action among its members (R.C. 167.03, not in the act).

Prior public nuisance law did not differentiate between types of buildings or source of financing. The former definition of "public nuisance" applied to any building. The act creates a new category of public nuisance, "public nuisance in subsidized housing." The act establishes a definition of nuisance that applies only to subsidized housing and specifies standards, by reference to standards in federal law, for a judge to apply when considering whether subsidized housing is a public nuisance. The act defines "subsidized housing" as a property with more than four dwelling units that is subsidized by one of the federal programs the act specifies.[211]

Under the act, a property is a "public nuisance in subsidized housing" if it is subsidized housing that fails to meet the standards that are defined in the federal regulations the act references.[212] The act requires the judge to apply the federal standards in a manner consistent with federal Department of Housing and Urban Development (HUD) and judicial interpretations of those standards. The act also requires notice be given to a property owner before a complaint is filed and specifies that a judge deem a property not a public nuisance in subsidized housing if the property achieved a score of 75 or more in HUD's Real Estate Assessment Center inspection during the previous year. The act prohibits the judge from

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[211] The specified federal housing programs are the New Construction or Substantial Rehabilitation Program, the Moderate Rehabilitation Program, and the Loan Management Assistance Program under the United States Housing Act of 1937 ("Section 8"); the Rent Supplement Program under the Housing and Urban Development Act of 1965; conversions to Section 8 from assistance under the Housing and Urban Development Act of 1965; the Supportive Housing for the Elderly Program under the Housing Act of 1959; the Supportive Housing for Persons with Disabilities Program under the National Affordable Housing Act of 1990; and the Rental Assistance Program under the United States Housing Act of 1949.

[212] Subsidized housing is a public nuisance if it fails to meet the following standards as are more completely defined in the Code of Federal Regulations (24 C.F.R. 5.703(b) to (f)): each building on the site is structurally sound, secure, habitable, and in good repair; each building's domestic water, electrical system, elevators, emergency power, fire protection, heating, ventilation, and air conditioning, and sanitary system is free of health and safety hazards and is functionally adequate, operable, and in good repair; each dwelling unit is structurally sound, habitable, and in good repair, and all areas and aspects of the dwelling unit are free of health and safety hazards and are functionally adequate, operable, and in good repair; if applicable, the dwelling unit has hot and cold running water, including an adequate source of potable water; if the dwelling unit includes its own sanitary facility, the sanitary facility is in proper operating condition, is usable in privacy, and is adequate for personal hygiene and the disposal of human waste; the common areas are structurally sound, secure, and adequate for their intended purposes, are free of health and safety hazards, operable, and in good repair; and all areas and components of the housing are free of health and safety hazards.

ordering the property to be sold to abate the nuisance unless the conveyance adheres to all requirements of the federal contract the owner had entered into, all requirements of the specific federal program under which the property was subsidized, and the purchaser agrees to continue to operate the property as subsidized housing.

LOTTERY COMMISSION (LOT)

- Allows the State Lottery Commission to adopt rules governing the display of advertising and celebrity images on lottery tickets and on other items used in the conduct of, or to promote, the statewide lottery and statewide joint lottery games.

- Would have prohibited Commission rules from (1) authorizing Sunday drawings on any lottery game unless the rule is approved by an executive order of the Governor and (2) setting a price that exceeds $20 to purchase an individual lottery ticket (VETOED).

- Eliminates the requirement that OBM transfer to the School Building Program Bond Service Fund the first $10 million of any money transferred to the Lottery Profits Education Fund from the State Lottery Fund in a fiscal year.

- Requires the State Treasurer, within 60 days after the end of each fiscal year, to certify to OBM whether the actuarial amount of the Deferred Prizes Trust Fund is sufficient for continued funding, throughout the fund's life, of all remaining deferred prize liabilities.

Rules for the display of advertising and celebrity images on lottery tickets and other lottery items

(R.C. 3770.03)

Continuing law requires the State Lottery Commission to adopt rules, generally in accordance with the Administrative Procedure Act, under which a statewide lottery and statewide joint lottery games may be conducted. Subjects covered in these rules include, but are not limited to, the following: (1) the type of statewide lottery to be conducted, (2) the prices of lottery tickets for the statewide lottery, (3) the number, nature, and value of prize awards, the manner and

frequency of prize drawings, and the manner in which prizes must be awarded to holders of winning tickets in the statewide lottery, (4) the locations at which and manner in which lottery tickets are sold in the statewide lottery and statewide joint lottery games, (5) the manner of collecting lottery sales revenue in the statewide lottery and statewide joint lottery games, (6) substantive criteria for the licensing of lottery sales agents, procedures for the suspension or revocation of their licenses, and the amount of compensation these agents must be paid, and (7) special game rules to implement any agreements that the Commission's Director enters into with other jurisdictions to conduct statewide joint lottery games.

The act explicitly authorizes the Commission to adopt rules, in addition to those described above, that establish standards governing the display of advertising and celebrity images on lottery tickets and on other items that are used in the conduct of, or to promote, the statewide lottery or joint statewide lottery games. Any revenue derived from the sale of advertising displayed on lottery tickets and on those other items is to be considered, for purposes of the payment of moneys into the State Lottery Gross Revenue Fund, to be "related proceeds" in connection with the statewide lottery or "gross proceeds" from statewide joint lottery games, as the case may be.

No Sunday lottery drawings on certain games and limit on the price of an individual lottery ticket

(R.C. 3770.03)

Continuing law requires that the State Lottery Commission adopt rules, generally in accordance with the Administrative Procedure Act, under which a statewide lottery and statewide joint lottery games may be conducted. Subjects to be included in these rules are the manner and frequency of prize drawings and the price of lottery tickets. The Governor vetoed provisions that would have prohibited Commission rules from (1) authorizing Sunday drawings on any lottery game unless the rule is approved by an executive order of the Governor and (2) setting a price that exceeds $20 to purchase an individual lottery ticket.

Lottery funds

(R.C. 3770.06)

Transfer of lottery profits to School Building Program Bond Service Fund eliminated

(R.C. 3770.06(B))

Under prior law, of the money that is transferred in a fiscal year from the State Lottery Fund to the Lottery Profits Education Fund, the first $10 million was

further transferred to the School Building Program Bond Service Fund. The act removes this further transfer requirement.

Certification of actuarial sufficiency of funding for deferred lottery prizes

(R.C. 3770.06(C))

Continuing law requires the Treasurer of State to credit investment earnings of the Deferred Prizes Trust Fund to the fund. Within 60 days after the end of a fiscal year, the Director of Budget and Management must certify the amount of investment earnings that need to be so credited to provide continued funding of deferred lottery prizes. Any earnings in excess of the amount certified are then transferred to the Lottery Profits Education Fund.

The act requires the Treasurer of State, within 60 days after the end of a fiscal year, to certify to the Director of Budget and Management whether the actuarial amount of the Deferred Prizes Trust Fund will be sufficient over the fund's life for continued funding of all remaining deferred lottery prize liabilities as of the last day of the fiscal year just ended. This certification does not affect the transfer of excess earnings to the Lottery Profits Education Fund as described above.

STATE MEDICAL BOARD (MED)

- Authorizes the State Medical Board to adopt rules specifying an acceptable examination and establishing the minimum score on that examination that demonstrates proficiency in spoken English for foreign medical graduates wishing to receive a certificate to practice medicine and surgery or osteopathic medicine and surgery in Ohio.

- Increases the time in which the Board must issue a final adjudicative order regarding a summary suspension from 60 to 75 days after the completion of its hearing.

Examination of proficiency in spoken English

(R.C. 4731.142)

Continuing law generally requires an individual to demonstrate proficiency in spoken English in order to receive a certificate to practice medicine and surgery

or osteopathic medicine and surgery, if the individual's eligibility for the certificate is based in part on certification from the Educational Commission for Foreign Medical Graduates and fulfillment of undergraduate requirements at an institution outside the United States. Under prior law, an individual could demonstrate such proficiency by obtaining a score of 40 or higher on the test of spoken English conducted by the Educational Testing Service.

The act instead authorizes the State Medical Board to adopt rules specifying an acceptable examination and establishing the minimum score on that examination that demonstrates proficiency in spoken English for foreign medical graduates wishing to receive a certificate to practice medicine and surgery or osteopathic medicine and surgery in Ohio.

Final adjudicative orders regarding summary suspension

(R.C. 4731.22)

Under certain circumstances, continuing law permits the State Medical Board to suspend without a hearing a person's certificate to practice medicine and surgery or osteopathic medicine and surgery. The person subject to the suspension may request an adjudicatory hearing, which generally must be held within 7 to 15 days of the request. Under prior law, the Board was required to issue a final adjudicative order within 60 days after completion of the hearing.

The act increases the time in which the State Medical Board must issue such a final adjudicative order from 60 to 75 days after the completion of its hearing.

MEDICAL TRANSPORTATION BOARD (AMB)

- Eliminates the Ohio Medical Transportation Fund.
- Requires the Ohio Medical Transportation Board to submit an annual report to the Governor and the General Assembly that provides information on the Board's operations for that fiscal year, including the number of licenses and permits issued and renewed, fees collected, complaints received, and investigations conducted.
- Requires the Board to post the report on its web site and make it available to the public on request.

Ohio Medical Transportation Trust Fund; Occupational Licensing and Regulatory Fund

(R.C. 4513.263, 4743.05, and 4766.05)

Numerous state licensing boards deposit funds and fees received into the same fund, the Occupational Licensing and Regulatory Fund (Fund 4K9), to accommodate cash flow needs for the various boards. Under prior law, the Ohio Medical Transportation Board deposited its fees and other moneys into the Ohio Medical Transportation Trust Fund. The act eliminates the Ohio Medical Transportation Trust Fund and authorizes fees and moneys collected by the Ohio Medical Transportation Board to be deposited into the Occupational Licensing and Regulatory Fund.

Annual Report

(R.C. 4766.22)

The act creates a new requirement that the Ohio Medical Transportation Board, not later than 45 days after the end of each fiscal year, submit a report to the Governor and General Assembly that provides all of the following information for that fiscal year:

(1) The number of licenses and permits issued and renewed and the amount of fees collected for them;

(2) The number of complaints submitted and investigations conducted;

(3) The number of adjudication hearings held and their outcomes;

(4) The amount of penalties imposed and collected;

(5) Other information the Board determines reflects its operations.

The Board must post the report on its web site and make it available to the public on request.

DEPARTMENT OF MENTAL HEALTH (DMH)

- Removes provisions effective July 1, 2007 permitting the Department of Mental Health to certify community mental health services only for services for disorders that are mental disorder according to the American

Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

- Requires the Director of Mental Health to consult with the Director of Budget and Management and representatives of local and county mental health services agencies to conduct an internal review of policies and procedures to increase efficiency and identify and eliminate duplicative practices.

- Would have required certain county boards of alcohol, drug addiction, and mental health services, community mental health boards, and alcohol and drug addiction services boards, along with the Departments of Mental Health, Alcohol and Drug Addiction Services, and Job and Family Services, to select from among the county boards one large, one mid-size, and one small county to participate in a behavioral health pilot program with the local boards that comprise the Heartland East Collaborative (VETOED).

Funding and certification of community mental health services

(R.C. 340.03 and 5119.611)

Under continuing law, a board of alcohol, drug addiction, and mental health services (ADAMHS board) is permitted to contract with a community mental health agency only if the agency's services have been certified by the Director of Mental Health. The board's eligibility for financial support from the Department of Mental Health is contingent on the Department's approval of the board's mental health plan. The act eliminates a provision that was to take effect July 1, 2007, under which community mental health services could be certified and state and federal funding provided only for services for individuals whose focus of treatment was a mental disorder according to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Under that provision certification or funding could not be provided for services solely for a substance use disorder, substance-induced disorder, chronic dementing organic mental disorder, mental retardation, or developmental disability.

Internal review

(Section 325.20.60)

The act requires the Director of Mental Health to consult with the Director of Budget and Management and representatives of local and county mental health services agencies to conduct an internal review of policies and procedures to increase efficiency and identify and eliminate duplicative practices.

Any savings identified as a result of the internal review must be spent on community-based care.[213] The Director of Mental Health must seek Controlling Board approval before expending any funds identified.

Behavioral health pilot program in specified counties

(Section 335.40.15)

The Governor vetoed provisions of the act that would have required certain local boards[214] and the Departments of Mental Health, Alcohol and Drug Addiction Services, and Job and Family Services to select one large county local board, one mid-size county local board, and one small local board to participate with the Heartland East Collaborative in a behavioral health pilot program to serve the counties of the selected local boards and the counties served by the Heartland East Collaborative. The pilot program was to begin not later than October 1, 2007 and terminate on June 30, 2009.

The pilot program's purpose was to test a model of a system of care for community behavioral health services. The model was required to propose to do all of the following:

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[213] The act does not define "community-based care."

[214] The local boards would have been (a) the Clermont County Mental Health & Recovery Board, (b) the Heartland East Collaborative, which is comprised of the Ashtabula Mental Health & Recovery Board; Columbiana County Mental Health & Recovery Board; Mental Health & Recovery Board of Portage County; Alcohol & Drug Addiction Services Board of Stark County; Stark County Community Mental Health Board; and Mental Health & Recovery Board of Wayne and Holmes Counties, (c) the Alcohol, Drug and Mental Health Board of Franklin County, (d) the Geauga County Board of Mental Health and Recovery Services, (e) the Mental Health, Drug and Alcohol Services Board of Logan and Champaign Counties, (f) the Mental Health & Recovery Services Board of Lucas County, (g) the Gallia-Jackson-Meigs Board of Alcohol, Drug Addiction and Mental Health Services, (h) the Mental Health and Recovery Services Board of Richland County.

(1) Provide clinically appropriate and timely behavioral health services;

(2) Provide improved access to a full continuum of behavioral health care to Medicaid recipients and individuals who are not Medicaid recipients;

(3) Improve the quality of behavioral health services provided;

(4) Improve accountability for behavioral health services provided through measurement of outcomes;

(5) Control costs to assure financial viability;

(6) Consider all public funds administered through the boards;

(7) Coordinate with Medicaid managed care plans operating in the counties in which the pilot is operated;

(8) Have the ability to be replicated in all regions of the state.

The act specified that the pilot program was permitted, but not required, to include the following elements:

(1) Development of defined behavioral health service packages;

(2) Guidelines to ensure that behavioral health service types and amounts match individual needs;

(3) Identification and tracking of outcomes;

(4) A process for care coordination and utilization review and management;

(5) Performance standards for provider participation.

The act would have required the pilot program to target the following individuals:

(1) Adults who reside in the counties served by the selected local boards and have been diagnosed as suffering from one or more serious mental illnesses;

(2) Adults who reside in the counties served by the selected local boards and have been diagnosed as suffering from alcoholism or drug addiction, or both;

(3) Adults who reside in the counties served by the selected local boards and have been diagnosed as suffering from at least one of the conditions described in (1) and at least one of the conditions described in (2), who have been identified

as having a high risk for frequent utilization of behavioral health services and currently receive services from the public behavioral health system.

The act specified that, to the extent the advisory committee determines appropriate, the program was to target adults who have been identified as having a high risk for frequent utilization of behavioral health services, regardless of diagnosis.

The act provided that selected local boards, the Departments of Mental Health, Alcohol and Drug Addiction Services, and Job and Family Services, and the Medicaid managed care plans operating in the counties in which the pilot is operated were to be required to conduct an interim and final evaluation of the program that include written reports to be submitted to the Governor, the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Directors of Mental Health, Alcohol and Drug Addiction Services, and Job and Family Services. The interim evaluation was to be submitted not later than January 30, 2009, and the final evaluation, not later than September 1, 2009.

The act would have required the selected local boards, the Departments of Mental Health, Alcohol and Drug Addiction Services, and Job and Family Services, and the Medicaid managed care plans operating in the counties in which the pilot was to be operated to convene an advisory committee to consult the selected local boards and Departments in the development and operation of the pilot programs. Advisory committee members were to represent consumers, advocacy groups, and providers of alcohol and drug addiction or mental health services. The advisory committee would cease to exist on submission of the report summarizing the results of the pilot program's final evaluation.

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES (DMR)

Responsibility for nonfederal share of Medicaid expenditures

- Revises the law governing when a county board of mental retardation and developmental disabilities (county MR/DD board) and the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) are required to pay the nonfederal share of Medicaid expenditures for home and community-based services provided under an ODMR/DD-administered Medicaid waiver program.

- Revises the law governing the funds that a county MR/DD board may use to pay the nonfederal share of such Medicaid expenditures.

- Specifies a minimum amount of funds that ODMR/DD must expend, subject to available appropriations, in fiscal year 2009 and thereafter to (1) pay for the nonfederal share of such Medicaid expenditures that ODMR/DD is required to pay and (2) assist county MR/DD boards in paying the nonfederal share of such expenditures that the county MR/DD boards are required to pay.

- Specifies a minimum amount of funds that ODMR/DD must expend, subject to available appropriations, in fiscal year 2009 and thereafter to (1) pay for the nonfederal share of such Medicaid expenditures that ODMR/DD is required to pay and (2) assist county MR/DD boards in paying the nonfederal share of such expenditures that the county MR/DD boards are required to pay.

Minimum county enrollment in waiver services

- Specifies the minimum number of persons that county MR/DD boards must ensure are enrolled in ODMR/DD-administered Medicaid waiver programs.

Appropriation item for Martin settlement

- Requires that funds appropriated for purposes of fulfilling the state's obligations under the *Martin* settlement be in an appropriation item that authorizes expenditures only for purposes of fulfilling those state obligations.

County MR/DD board three-year plan

- Revises the law governing a plan that a county MR/DD board must submit to ODMR/DD for approval to maintain complete Medicaid local administrative authority.

Gallipolis developmental center pilot program

- Requires the Director of ODMR/DD to establish, as part of the Individual Options (IO) Medicaid waiver program a one-year pilot program under which the Gallipolis Developmental Center provides home and

community-based services under IO to not more than ten individuals who volunteer to participate.

Home and community-based services

- Provides that a person or government entity must be certified to provide supported living or licensed as a residential facility, rather than certified to provide home and community-based services or licensed as a residential facility, to be eligible to receive payment for providing home and community-based services.

- Eliminates the law governing certification of home and community-based services providers.

- Establishes a new certification process for supported living.

Residential facility licensure

- Requires that the Director of MR/DD send a copy of a letter regarding the initiation of license revocation proceedings against a residential facility to the county MR/DD board and that the county MR/DD board send a copy of the letter to each resident who receives services from the residential facility.

- Requires a hearing examiner to file a report and recommendations regarding the revocation of a residential facility license not later than ten days after the last of (1) the close of the hearing, (2) if a transcript of the proceedings is ordered, the date the hearing examiner receives the transcript, or (3) if post-hearing briefs are timely filed, the date the hearing examiner receives the briefs.

Waiting period for certificate and license holders

- Provides that an applicant for a supported living certificate or residential facility license, the holder of a certificate or license, or a related party of any of them cannot be granted a certificate or license or renewal for one year after the Director of MR/DD refuses to issue or renew the certificate or license.

- Prohibits for five years a supported living certificate holder or residential facility license holder whose certificate or license is revoked, from re-

applying for the certificate or license and applies the prohibition to related parties.

Program fee fund

- Provides for the fees that ODMR/DD collects in certifying providers of supported living, licensing residential facilities, and certifying and registering employees of county MR/DD boards to be deposited into a new fund called the Program Fee Fund.

Notice of disciplinary action

- Specifies when certain individuals and entities are deemed to have received notice of disciplinary action ODMR/DD intends to take.

Notice of change of address

- Requires that individuals seeking or holding certain licenses, certificates, or evidences of registration from ODMR/DD notify ODMR/DD of a change of address.

Residential and Respite Care

- Eliminates ODMR/DD's authority to enter into a contract to (1) provide residential services in an intermediate care facility for the mentally retarded (ICF/MR) to an individual who meets the criteria for admission to such a facility but is ineligible for Medicaid due to unliquidated assets subject to final probation, (2) provide respite care services in an ICF/MR, (3) provide residential services in a facility that has applied for, but not received, certification as an ICF/MR if a good faith effort is being made to bring the facility into compliance with the certification requirements, or (4) reimburse an ICF/MR for costs not otherwise reimbursed under the Medicaid program for clothing for individuals with MR/DD.

Nonfederal share of additional ICF/MR beds

- Requires ODMR/DD to transfer funds to the Department of Job and Family Services to pay the nonfederal share of Medicaid costs for beds that obtain certification as an ICF/MR on or after July 1, 2007.

County MR/DD board subsidies

- Removes from the Revised Code the requirement that ODMR/DD make a general purpose subsidy and subsidies for service and support administration and supported living to county MR/DD boards.

- Includes an appropriation earmark in uncodified law for fiscal years 2008 and 2009 that requires ODMR/DD to use certain funds appropriated to ODMR/DD to pay each county MR/DD board an amount that is equal to the amount the boards received in fiscal year 2007 under the general purpose, service and support administration, and supported living subsidies.

County MR/DD boards arranging supported living

- Requires the Director of MR/DD to adopt rules that establish the extent to which a county MR/DD board may provide supported living.

County MR/DD board service contracts

- Repeals law governing service contracts between a county MR/DD board and a service provider, including the law governing mediation and arbitration procedures regarding service contracts.

- Eliminates a county MR/DD board's authority to contract with providers of Medicaid home and community-based services.

Priority waiting lists for home and community-based services

- 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.

- Authorizes a county MR/DD board to continue to use, until December 31, 2009, 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.

County MR/DD board reporting requirements

- Changes the date a county MR/DD board must submit an itemized report of income and operating expenditures to April 13 (from March 13).

- Eliminates a county MR/DD board requirement to submit a report on the total annual cost per enrollee for operation of programs and services operated by the county in the preceding year.

Targeted case management services

- Requires county MR/DD boards to pay the nonfederal portion of targeted case management costs to ODMR/DD.

- Permits ODMR/DD and the Job and Family Services to enter into an interagency agreement requiring ODMR/DD to pay the Department of Job and Family Services the nonfederal portion of the cost of targeted case management services paid by county MR/DD boards and the Department of Job and Family Services to pay the total cost of targeted case management claims.

MR/DD Futures Study Committee

- Creates the MR/DD Futures Study Committee and requires the Committee, not later than March 30, 2008, to submit a report to the Governor and General Assembly on the Committee's recommendations regarding the funding design of services provided by county MR/DD boards.

Responsibility for nonfederal share of Medicaid expenditures

(R.C. 5123.047, 5123.048, 5123.049, 5123.0411, 5123.0416, 5126.046, 5126.054, 5126.056, 5126.059, 5126.0510, 5126.0511, 5126.18, and 5705.44)

Background

The Department of Job and Family Services is authorized to seek federal approval for one or more Medicaid waivers under which home and community-based services are provided to individuals with mental retardation or a developmental disability (MR/DD) as an alternative to placement in an

intermediate care facility for the mentally retarded.[215] The Department is required to enter into an interagency agreement with the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to have ODMR/DD administer one or more of the programs authorized by such a Medicaid waiver.[216]

Prior law specified when a county board of mental retardation and developmental disabilities (county MR/DD board) or ODMR/DD was responsible for the nonfederal share of Medicaid expenditures for ODMR/DD-administered home and community-based services. It also specified when a county MR/DD board or ODMR/DD was required to pay the nonfederal share of Medicaid expenditures for Medicaid case management services. Medicaid case management services are case management services required by the state Medicaid plan that are provided to an individual with MR/DD.

The act revises when a county MR/DD board or ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for ODMR/DD-administered home and community-based services. The act does not revise the law governing when a county MR/DD board is responsible for the nonfederal share of Medicaid expenditures for Medicaid case management services.[217]

Responsibility for home and community-based services

A county MR/DD board that has Medicaid local administrative authority for ODMR/DD-administered home and community-based services must pay the nonfederal share of Medicaid expenditures for such services provided to an individual that the county MR/DD board determines is eligible for county MR/DD

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[215] R.C. 5111.87.

[216] R.C. 5111.871.

[217] Although the act does not change when a county MR/DD board is responsible for the nonfederal share of Medicaid expenditures for Medicaid case management services, when ODMR/DD must pay the nonfederal share is changed. A county MR/DD board is required to pay the nonfederal share of Medicaid expenditures for Medicaid case management services the county MR/DD board provides to an individual who the county MR/DD board has determined is eligible for county MR/DD board services. Prior law required ODMR/DD to pay the nonfederal share if the services were provided to an individual that a county MR/DD board *had* determined was *not* eligible for county MR/DD board services. In contrast, the act requires ODMR/DD to pay the nonfederal share if no county MR/DD board is responsible. This means ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for such services no county MR/DD board provides regardless of whether there has been a determination of whether the recipient is eligible for county MR/DD board services.

board services unless ODMR/DD is required to pay the nonfederal share. ODMR/DD is required to pay the nonfederal share if (1) the services are provided to an individual with MR/DD that a county MR/DD board has determined is not eligible for county MR/DD board services, (2) the services are provided to an individual with MR/DD given priority for the services under state law governing waiting lists for county MR/DD board services, or (3) ODMR/DD enters into an agreement with a county MR/DD board under which ODMR/DD is to pay the nonfederal share.

Under the act, and except as otherwise provided by an agreement between a county MR/DD board and ODMR/DD, a county MR/DD board is responsible for the nonfederal share of Medicaid expenditures for ODMR/DD-administered home and community-based services under four circumstances. ODMR/DD is responsible for the nonfederal share of Medicaid expenditures for home and community-based services that no county MR/DD board is required to pay.

(1) Services the county MR/DD board provides. A county MR/DD board is responsible for such services the county MR/DD board provides to an individual the county MR/DD board determines is eligible for county MR/DD board services.

(2) Services to an individual enrolled as of June 30, 2007. A county MR/DD board is responsible for such services another provider provides to an individual who the county MR/DD board determines is eligible for county MR/DD board services and is enrolled as of June 30, 2007, in the Medicaid wavier program under which the services are provided. However, in the case of such services provided during fiscal year 2008 under the Individual Options Medicaid waiver program, a county MR/DD board is not required to pay more than the sum of (1) the total amount the county MR/DD board pays as the nonfederal share for home and community-based services provided in fiscal year 2007 under the Individual Options Medicaid waiver program and (2) an amount equal to 1% of the total amount ODMR/DD and the county MR/DD board pay as the nonfederal share for home and community-based services provided in fiscal year 2007 under the Individual Options Medicaid waiver program to individuals the county MR/DD board determines are eligible for county MR/DD board services. Also, a county MR/DD board is required to pay, for such services provided under the Individual Options Medicaid waiver program during fiscal year 2008, no less than the total amount the county MR/DD board pays as the nonfederal share for home and community-based services provided in fiscal year 2007 under the Individual Options Medicaid waiver program. A county MR/DD board is not required to pay the nonfederal share of Medicaid expenditures for such services provided after June 30, 2008, if ODMR/DD fails to comply with the act's requirement to expend

at least a certain amount of funds on the nonfederal share of Medicaid expenditures in fiscal year 2009 and thereafter.[218]

(3) Services to an individual enrolled after June 30, 2007. A county MR/DD board is responsible for such services another provider provides to an individual who the county MR/DD board determines is eligible for county MR/DD board services and, pursuant to a request the county MR/DD board makes, enrolls after June 30, 2007, in the Medicaid waiver program under which the services are provided. However, a county MR/DD board is not required to pay the nonfederal share of Medicaid expenditures for such services if (1) the services are provided to an individual who enrolls in the Medicaid waiver program under which the services are provided as the result of an order issued following a state hearing, administrative appeal, or appeal to a court of common pleas regarding the Medicaid program and (2) there are more individuals who are eligible for county MR/DD board services from the county MR/DD board enrolled in the Medicaid waiver program than is required under the act's provision regarding minimum county MR/DD board enrollment in waiver services.[219]

(4) Services for which a county MR/DD board agrees to pay. A county MR/DD board may enter into an agreement with ODMR/DD under which the county MR/DD board agrees to pay the nonfederal share of Medicaid expenditures for one or more ODMR/DD-administered home and community-based services that the county MR/DD board is not otherwise responsible to pay and are provided to an individual who the county MR/DD board determines is eligible for county MR/DD board services. The agreement must specify which home and community-based services the agreement covers and the county MR/DD board must pay the nonfederal share of Medicaid expenditures for the services the agreement covers as long as the agreement is in effect.

Agreement for ODMR/DD to pay the nonfederal share of waiver services

Prior law permitted ODMR/DD to enter into an agreement with a county MR/DD board under which ODMR/DD was to pay the nonfederal share of Medicaid expenditures for home and community-based services provided to individuals with MR/DD residing in the county served by the county MR/DD board. The act provides instead, that ODMR/DD may enter into an agreement with a county MR/DD board under which ODMR/DD is to pay the nonfederal share of Medicaid expenditures for one or more home and community-based services that the county MR/DD board would, if not for the agreement, be required

[218] See "***Minimum amount of funds to be expended on Medicaid expenditures***" below.

[219] See "***Minimum county MR/DD board enrollment in waiver services***" below.

to pay. The act requires that the agreement specify which home and community-based services the agreement covers and that ODMR/DD pay the nonfederal share of Medicaid expenditures for the services that the agreement covers as long as the agreement is in effect.

Minimum amount of funds to be expended on Medicaid expenditures

The act requires ODMR/DD to expend in fiscal year 2009 and each fiscal year thereafter, not less than the amount appropriated in appropriation item 322-416, Medicaid waiver--state match, in fiscal year 2008 to (1) pay the nonfederal share of Medicaid expenditures for home and community-based services that the act requires ODMR/DD to pay and (2) assist county MR/DD boards in paying the nonfederal share of Medicaid expenditures for home and community-based services that the act requires county MR/DD boards pay. (The act appropriates $109,551,380 in appropriation item 322-416 for fiscal year 2008.) This requirement is subject to the availability of funds appropriated to ODMR/DD for Medicaid waiver state match.

ODMR/DD must make the expenditures to assist county MR/DD boards in paying their responsibility for nonfederal share in the form of allocations to county MR/DD boards or by other means. If ODMR/DD makes the expenditures in the form of allocations, the process for making the allocations must conform to a process ODMR/DD is to establish after consulting with representatives of county MR/DD boards.

Funds a county MR/DD board may use to pay nonfederal share

Continuing law specifies funds that a county MR/DD board may use to pay the nonfederal share of Medicaid expenditures for Medicaid case management services and ODMR/DD-administered home and community-based services. For example, a county MR/DD board may use earned federal revenue funds the county MR/DD board receives for Medicaid services it provides.[220]

To the extent consistent with the levy that generates the taxes, a county MR/DD board may use county levy money that the board of county commissioners allocates to the county MR/DD board. The act eliminates a restriction that the board of county commissioners must have allocated the levy money to the county MR/DD board specifically to pay the nonfederal share of the Medicaid services.

[220] See "***Elimination of county MR/DD board subsidies***" below for further discussion of funds a county MR/DD board may use to pay the nonfederal share.

The act adds to the list of funds a county MR/DD board may use to pay the nonfederal share of Medicaid expenditure for home and community-based services funds that ODMR/DD allocates or otherwise makes available to the county MR/DD board pursuant to the act's requirement that ODMR/DD expend at least a certain amount of funds to so assist county MR/DD boards.[221]

Minimum county enrollment in waiver services

(R.C. 5126.0512)

The act requires that each county MR/DD board ensure, for each ODMR/DD-administered Medicaid waiver program, that the number of individuals eligible for county MR/DD board services who are enrolled in such a Medicaid waiver program is no less than the sum of (1) the number of individuals eligible for services from the county MR/DD board who are enrolled in the Medicaid waiver program on June 30, 2007, and (2) the number of Medicaid waiver program slots that the county MR/DD board requested before July 1, 2007, were assigned to the county MR/DD board before that date, but in which no individual was enrolled before that date. However, an individual enrolled in an ODMR/DD-administered Medicaid waiver program after March 1, 2007, due to an emergency reserve capacity waiver assignment is not to be counted in determining a county MR/DD board's minimum enrollment requirement. Also, an individual who is enrolled in a Medicaid waiver program to comply with the terms of the consent order filed March 5, 2007, to settle the federal class action case *Martin v. Strickland*,[222] is to be excluded in determining whether a county MR/DD board has complied with the minimum enrollment requirement.[223]

A county MR/DD board is required to make as many requests for individuals to be enrolled in an ODMR/DD-administered Medicaid waiver program as necessary for the county MR/DD board to comply with the minimum enrollment requirement.

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[221] See "***Minimum amount of funds to be expended on Medicaid expenditures***" above.

[222] *Martin v. Strickland*, Case No. 89-CV-00362, United States District Court for the Southern District of Ohio, Eastern Division.

[223] See "***Appropriation item for Martin settlement***" below.

Appropriation item for Martin settlement

(R.C. 126.04)

In March of 2007, a federal judge signed a consent order for the settlement of the federal class action case *Martin v. Strickland*. That case originated in 1989, as *Martin v. Celeste*, and was litigated for 18 years. The case was brought by persons seeking to give individuals with MR/DD the ability to choose community-based, integrated residential services over placement in institutional care, such as a nursing facility. Included in the settlement is a requirement that ODMR/DD and Department of Job and Family Services request funding for an additional 1,500 slots for the Individual Options Medicaid waiver program in the state budget for fiscal years 2008 and 2009. Another requirement is that ODMR/DD conduct surveys of residents of state-run developmental centers and private and county-owned intermediate care facilities for the mentally retarded to determine which residents would rather receive home and community-based services, if available.

The act requires that funds appropriated for purposes of fulfilling the state's obligations under the *Martin* consent order be in an appropriation item that authorizes expenditures only for purposes of fulfilling the state's obligations under the consent order.

County MR/DD board three-year plan

(R.C. 5126.054, 5111.872, 5123.046, and 5126.056)

Generally, a county MR/DD board has Medicaid local administrative authority regarding individuals with MR/DD who reside in the county the MR/DD board serves and seek or receive ODMR/DD-administered home and community-based services. The county MR/DD board's duties under Medicaid local administrative authority include performing assessments and evaluations of the individuals, assisting such individuals' right to choose a qualified and willing provider, and monitoring the individuals to ensure their health, safety, and welfare.

ODMR/DD is required to issue an order terminating some or all of a county MR/DD board's Medicaid local administrative authority if (1) the county MR/DD board fails, within the deadline, to submit to ODMR/DD all the components of a three-year plan ongoing law requires county MR/DD boards to submit to ODMR/DD, (2) ODMR/DD disapproves the county MR/DD board's three-year plan, (3) the county MR/DD board fails to update and renew its three-year plan in accordance with a schedule ODMR/DD develops, or (4) the county MR/DD board fails to implement its initial or renewed three-year plan. The act revises the law governing the three-year plans.

Under prior law, a county MR/DD board's three-year plan had four components: an assessment component; a component that provides for the recruitment, training, and retention of existing and new direct care staff; a preliminary implementation component; and a component that provides for the implementation of Medicaid case management services and ODMR/DD-administered home and community-based services for individuals who begin to receive the services on or after the date ODMR/DD approves the plan.

The act reduces from four to three the number of components of the three-year plan by eliminating the component that provides for the recruitment, training, and retention of existing and new direct care staff. Regarding the component that provides for implementation of Medicaid case management and ODMR/DD-administered home and community-based services, the act eliminates a requirement that it include an agreement that a county MR/DD board comply with the method of paying for extraordinary costs and ensuring the availability of adequate funds in the event a county property tax levy for services for individuals with MR/DD fails. The act also eliminates obsolete deadlines for county MR/DD boards to submit the different components of the plan for ODMR/DD's approval of initial three-year plans.

Gallipolis Developmental Center pilot program

(Section 337.40.15)

ODMR/DD operates a number of residential facilities for persons with MR/DD. The ODMR/DD-operated residential facilities are often referred to as developmental centers.

The act requires the Director of ODMR/DD to establish, as part of the Individual Options (IO) Medicaid waiver program, a pilot program to be operated during calendar year 2009 under which the Gallipolis Developmental Center provides home and community-based services under IO to not more than ten individuals at one time. Money is to be expended on the pilot program beginning in the first half of calendar year 2009.

The pilot program must be operated in a manner consistent with the terms of the consent order for the settlement of the federal class action case *Martin v. Strickland*.[224] The pilot program must also be operated in accordance with the amendment to the federal Medicaid waiver authorizing IO. The ODMR/DD Director and Director of Job and Family Services are required to provide the

[224] See "***Appropriation item for Martin settlement***" above.

Gallipolis Developmental Center technical assistance the Center needs regarding the pilot program.

Only individuals eligible for IO who volunteer to receive home and community-based services under IO from the Gallipolis Developmental Center may participate in the pilot program.

All expenses the Gallipolis Developmental Center incurs in participating in the pilot program must be paid from the Medicaid payments the Center receives for providing home and community-based services under the pilot program.

The ODMR/DD Director is required to conduct an evaluation of the pilot program. The evaluation is to include an evaluation of the quality and effectiveness of the home and community-based services the developmental center provides under the pilot program. The Director must submit a report of the evaluation to the Governor and General Assembly not later than April 1, 2010. The report is to include recommendations for or against permitting the Gallipolis Developmental Center to continue to provide home and community-based services under IO and permitting other developmental centers to begin to provide the services.

Home and community-based services

(R.C. 5123.16 (repealed) and 5123.045)

Prior law prohibited a person or government entity from receiving payment for providing home and community-based services under a Medicaid waiver program ODMR/DD administers unless the person or government entity was certified to provide such services or licensed as a residential facility. The act provides instead that a person or government entity must be certified to provide supported living[225] or licensed as a residential facility. Prior law authorizing the Director of MR/DD to certify providers of home and community-based services is

[225] "Supported living" is defined under continuing law as services provided for as long as 24 hours a day to an individual with MR/DD through any public or private resources, including moneys from the individual, that enhance the individual's reputation in community life and advance the individual's quality of life by: (1) providing the support necessary to enable an individual to live in a residence of the individual's choice, with any number of individuals who are not disabled, or with not more than three individuals with MR/DD unless the individuals are related by blood or marriage, (2) encouraging the individual's participation in the community, (3) promoting the individual's rights and autonomy, (4) assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence. (R.C. 5126.01.)

repealed and new law enacted replacing law governing the certification of supported living.

Supported living certificate

(R.C. 5123.16 (new), 5123.16 (repealed), 5123.161, 5123.163, 5123.165, 5123.167, 5123.168, 5123.169, 5123.211, 5126.431, and 5126.45)

Certificate procedure. Under the new certification process for supported living, the Director of MR/DD is to issue an applicant a supported living certificate if the applicant follows the application process, meets the certification standards, and pays the certification fee. The Director is to adopt rules establishing the application process, certification standards, and fee.

The act permits the Director to conduct surveys of persons and government entities that seek a supported living certificate to determine whether they meet the certification standards. The Director is also permitted to conduct surveys of persons and government entities holding a supported living certificate (i.e., providers) to determine whether they continue to meet the certification standards. The Director must conduct surveys in accordance with rules the Director is required to adopt. The act provides that the records of surveys are public records and must be made available on request.

The Director is to determine by rule the period of time a supported living certificate is valid. The certificate remains valid for that period unless the Director terminates the certificate or the certificate holder voluntarily surrenders it.

Unless there is good cause for refusal to renew a supported living certificate,[226] the Director is to renew the certificate if the certificate holder follows the renewal process, continues to meet the applicable certification standards, and pays the renewal fee. The Director is required to adopt rules establishing the renewal process and renewal fee.

Restrictions on providing supported living and residence. The act generally prohibits any person or government entity from providing supported living services to an individual with MR/DD if the person or government entity also provides a residence to the individual with MR/DD. However, the prohibition does not apply to a person to whom either of the following applies:

- The person also resides with the resident and does not provide at any time supported living to more than a total of three individuals with MR/DD who reside in that residence.

[226] See "***Actions against a certificate holder***" below.

- The person is an association of family members related to two or more of the individuals with MR/DD who reside in the residence and does not provide at any one time supported living to more than a total of four individuals with MR/DD who reside in that residence.

Actions against a certificate holder. The act permits the Director of MR/DD, under good cause as specified in rules adopted by the Director, to issue an adjudication order to refuse to issue or renew, or to revoke a supported living certificate. Another adjudication order the Director may issue is to suspend a certificate holder's authority to (1) continue to provide supported living to one or more individuals from one or more counties, (2) begin to provide supported living to one or more individuals from one or more counties, or (3) continue and begin to provide supported living to one or more individuals from one or more counties. The act provides that the following are good cause to take such actions against a certificate holder:

- An applicant or certificate holder fails to meet or continue to meet certification standards;
- The certificate holder violates residency prohibitions;[227]
- The certificate holder fails to comply with state law governing criminal background checks and the registry of MR/DD employees;
- Misfeasance;
- Malfeasance;
- Nonfeasance;
- Confirmed abuse or neglect;
- Financial irresponsibility;
- Other conduct determined by the Director as injurious to individuals with MR/DD.

The act requires that the Director follow the Administrative Procedure Act (R.C. Chapter 119.) when issuing an adjudication order regarding a supported living certificate. The Administrative Procedure Act generally requires that an agency provide an opportunity for a hearing before issuing an adjudication order. An exception to this requirement applies to an adjudication order to suspend a

[227] See "***Restrictions on providing supported living and residence***," above.

certificate where a statute specifically permits the suspension without a hearing. The act specifically permits the Director to issue an adjudication order to suspend a certificate holder's authority to continue or begin (or both) to provide supported living to one or more individuals from one or more counties before providing an opportunity for a hearing if all of the following are the case:

- The Director determines such action is warranted by the certificate holder's failure to continue to meet the applicable certification standards.

- The Director determines that the failure either represents a pattern of serious noncompliance or creates a substantial risk to the health or safety of an individual who receives or would receive supported living from the certificate holder.

- If the order will suspend the certificate holder's authority to continue to provide supported living to an individual, (1) the Director makes the individual, or the individual's guardian, aware of the Director's determination regarding a pattern of serious noncompliance or a substantial risk to health or safety and the individual or guardian does not select another certificate holder and (2) a county MR/DD board has filed a complaint with a probate court[228] and the probate court does not issue an order authorizing the county MR/DD board to arrange services for the individual pursuant to an individualized service plan.

The Director may also issue an adjudication order to terminate a certificate if the certificate holder has not, for 12 consecutive months, billed for supported living.

If the Director issues such a suspension order before providing an opportunity for a hearing, the Director is required to send a notice to the certificate holder within 24 hours after issuing the order. The Director must also notify the certificate holder of the reasons for the order. The certificate holder may, within ten days of receiving the notice, request a hearing on the order. The request must include the certificate holder's current address. A hearing must take place within 30 days of the certificate holder's request.

[228] The complaint must include facts describing the nature of abuse or neglect that the individual suffered due to the certificate holder's actions that are the basis for the Director making the determination regarding a pattern of serious noncompliance or a substantial risk to health or safety.

The hearing must be conducted in accordance with the Administrative Procedure Act's provisions regarding adjudication hearings except that:

- The hearing must continue uninterrupted, other than weekends, legal holidays, or other interruptions the certificate holder and Director agree to.

- If the Director appoints a referee or examiner to conduct the hearing, the referee or examiner must submit to the Director a written report of the findings of fact and conclusions of law and a recommendation of action the Director should take.

- The certificate holder may submit objections to the referee or examiner's report and recommendation.

- The Director must approve, modify, or disapprove the referee or examiner's report and recommendation between six and fifteen days after the Director sends a copy of the report and recommendation to the certificate holder, certificate holder's certificate, or other representative of record.

The Director may lift an immediate suspension order even though a hearing regarding the order is occurring or pending if the Director determines the certificate holder has taken action to eliminate the cause of the order. The Director must lift the order if the certificate holder provides a compliance plan acceptable to the Director and the Director determines the certificate holder implements the plan correctly.

Residential facility licensure

(R.C. 5123.19)

No person or government entity may operate a residential facility without a valid license issued by the Director of MR/DD. Generally, a residential facility is a home or facility in which an individual with MR/DD resides. However, none of the following are considered to be a residential facility: the home of a relative or legal guardian in which an individual with MR/DD resides, a certified respite care home, a county home or district home, and a dwelling in which the only individuals with MR/DD are in an independent living arrangement or are being provided supported living.

The Director is authorized to take certain actions against a residential facility if it is determined that an applicant for or holder of a residential facility license is not in compliance with state law or rules regarding residential facilities.

For example, the Director may deny or refuse to renew a license or place a monitor in a residential facility.

Another action the Director may take is to revoke a license. Prior law required the Director, when license revocation proceedings are initiated, to notify each affected resident, the resident's guardian if the resident is an adult for whom a guardian has been appointed, the resident's parent or guardian if the resident is a minor, and the county MR/DD board. The act requires instead that the Director send a copy of a letter regarding the initiation of license revocation proceedings to the county MR/DD board and that the county MR/DD board send a copy of the letter to each resident who receives services from the residential facility, the guardian of each resident who receives services from the residential facility if the resident has a guardian, and the parent or guardian of each resident who receives services from the residential facility if the resident is a minor.

Issuing an order suspending admissions to a residential facility is another action the Director may take. Continuing law includes special provisions regarding such an order that is issued before the Director provides the residential facility an opportunity for an adjudication. In such a case, the license holder may request a hearing not later than ten days after receiving a notice required by the Administrative Procedure Act (R.C. Chapter 119.). Prior law required that the hearing commence not later than 30 days after the Department receives a request for the hearing if a timely request for a hearing is made. The act stipulates that the 30-day deadline does not apply if the request for the hearing fails to include the license holder's current address.

Prior law required a hearing examiner to file a report and recommendations not later than ten days after the close of the hearing. The act instead requires the hearing examiner to file the report and recommendations not later than ten days after the last of the following:

- The close of the hearing.
- If a transcript of the proceedings is ordered, the hearing examiner receives the transcript.
- If post-hearing briefs are timely filed, the hearing examiner receives the briefs.

The act requires that a copy of the written report and recommendation of the hearing examiner to be sent, by certified mail, to the license holder and the license holder's attorney, if applicable, not later than five days after the report is filed.

Waiting period for certificate and license holders

(R.C. 5123.167 and 5123.19)

Prior law did not provide for a period of time a supported living certificate or residential facility license applicant, supported living certificate holder, or residential facility license holder denied a license or license renewal must wait to reapply. The act provides that an applicant or certificate or license holder and a related party[229] of the applicant or certificate or license holder must wait one year after the date of denial to re-apply for the certificate or license.

The act also prevents a certificate holder or license holder whose certificate or license is revoked, or related party of the certificate or license holder, from re-applying for a certificate or license for five years.

Program fee fund

(R.C. 5123.033, 5123.169, and 5123.19)

Continuing law requires the Director of MR/DD to adopt rules establishing uniform standards and procedures for the certification of persons for employment with county MR/DD boards as superintendents, management employees, and professional employees and uniform standards and procedures for the registration of persons for employment by county MR/DD boards as registered service employees. Prior law required that all the certification and registration fees be deposited into the Employee Certification and Registration Fund. Money in the fund was to be used solely for the operation of the certification and registration

[229] The act defines "related party" as any of the following:

(1) In the case of a provider who is an individual, the provider's spouse, parent, stepparent, child, sibling, half sibling, stepsibling, grandparent, grandchild, employee or employer of the provider or the provider's spouse;

(2) In the case of a provider that is other than an individual, an employee, officer, or board of directors or trustees of the provider, a person owning a financial interest of 5% or more or corporation that has a subsidiary relationship with the provider, a person or government entity that has control over the provider's day-to-day operation, or a person over which the provider has control of day-to-day operation;

(3) In the case of a government entity, an employee, officer, member of the provider's governing board, government entity that has control over the provider's day-to-day operation, or person or government entity over which the provider has control of day-to-day operation.

program and for providing continuing training to county MR/DD board employees.

The Director also is required to adopt rules establishing fees for issuing and renewing residential facility licenses. Prior law did not specify which fund the fees are to be deposited into.

As discussed above, the act establishes a new certification process for supported living. The Director is required to adopt rules establishing the fee for issuing and renewing a supported living certificate.

The act eliminates the Employee Certification and Registration Fund and creates the Program Fee Fund in the state treasury. All fees collected for certifying and registering county MR/DD board employees, licensing residential facilities, and certifying supported living providers are to be credited to the fund. Money credited to the fund is to be used solely for ODMR/DD's duties regarding certifying and registering county MR/DD board employees, licensing residential facilities, certifying supported living providers, and providing continuing education and professional training to county MR/DD board employees and other providers of services to individuals with MR/DD. If money credited to the fund is inadequate to pay all of such costs, ODMR/DD is permitted to use other available funds appropriated to ODMR/DD to pay the remaining costs.

Notice of disciplinary action

(R.C. 5123.0414 and 5123.51)

Continuing law and the act authorize the Director of MR/DD to do all of the following:

- Issue certificates and evidences of registration to ODMR/DD employees and employees of entities that contract with ODMR/DD or a county MR/DD board.
- Certify supported living providers.
- License residential facilities.
- Certify MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings.
- Certify registered nurses to provide MR/DD personnel training.
- Certify and register employees of county MR/DD boards.

- Establish a registry for MR/DD employees who abuse, neglect, or misappropriate property (ODMR/DD Abuser Registry).

As part of the Director's authority to perform these tasks, the Director may take certain actions, such as refusing or revoking a license or certificate or placing an MR/DD employee on the ODMR/DD Abuser Registry. Generally, the Director is required to take such actions in accordance with the Administrative Procedure Act (R.C. Chapter 119.). Part of the procedures of the Administrative Procedure Act include giving a party notice informing the party of the right to a hearing. The notice must be given by registered mail, return receipt requested.

Under the act, when the Director sends a party a notice by registered mail, return receipt requested, that the Director intends to take action against the party authorized by state law governing any of the above mentioned duties and the notice is returned to the Director with an endorsement indicating that the notice was refused or unclaimed, the Director must resend the notice by ordinary mail to the party.

If the original notice was refused, the notice is to be deemed to have been received as of the date the Director resends the notice.

If the original notice was unclaimed, the notice is to be deemed received as of the date the Director resends the notice unless, not later than 30 days after the date the Director sent the original notice, the resent notice is returned to the Director for failure of delivery.

If the notice concerns placing an MR/DD employee on the ODMR/DD Abuser Registry and the resent notice is returned to the Director for failure of delivery not later than 30 days after the date the Director sent the original notice, the Director is required by the act to cause the notice to be published in a newspaper of general circulation in the county of the party's last known residence or business and to mail a dated copy of the published notice to the party at the last known address. The notice is to be deemed received as of the date of the publication.

If the notice concerns any of the action duties mentioned above and the resent notice is retuned to the Director for failure of delivery not later than 30 days after the date the Director sent the original notice, the Director must resend the notice to the party a second time. The notice is to be deemed received as of the date the Director resends the notice the second time.

Notice of change of address

(R.C. 5123.0415)

The act requires each person and government entity that applies for or holds any of the following to notify the Director of MR/DD of any change of address:

- Certificate or evidence of registration as an ODMR/DD employee or an employee of an entity that contracts with ODMR/DD or a county MR/DD board.
- Supported living certificate.
- Residential facility license.
- MR/DD personnel certificate to administer prescribed medications, perform health-related activities, and perform tube feedings.
- Registered nurse certificate to provide MR/DD personnel training.
- Certificate or registration as a county MR/DD board employee.

Residential and respite care

(R.C. 5123.199 (repealed); 127.16, and 5123.051)

The act eliminates ODMR/DD's authority to enter into a contract to do any of the following:

- Provide residential services in an intermediate care facility for the mentally retarded (ICF/MR) to an individual who meets the criteria for admission to such a facility but is ineligible for Medicaid due to unliquidated assets subject to final probation.
- Provide respite care services in an ICF/MR.[230]
- Provide residential services in a facility for which the person or government agency with whom ODMR/DD is to contract has applied for, but has not received, certification and payment as an ICF/MR if the

[230] Respite care is appropriate, short-term, temporary care provided to an individual with MR/DD to sustain the family structure or to meet planned or emergency needs of the family. (R.C. 5123.171.)

person or government agency is making a good faith effort to bring the facility into compliance with the certification requirements.

- Reimburse an ICF/MR for costs not otherwise reimbursed under the Medicaid program for clothing for individuals with MR/DD.

Nonfederal share of additional ICF/MR beds

(Section 337.40.30)

The act provides that if one or more new beds obtain certification as an ICF/MR on or after July 1, 2007, the Director of MR/DD must transfer funds to the Department of Job and Family Services to pay the nonfederal share of the Medicaid costs for those beds. Except as otherwise provided by the act's provision regarding the minimum amount of funds that ODMR/DD must expend in fiscal year 2009 and thereafter to pay the nonfederal share of certain Medicaid expenditures and assist county MR/DD boards in paying such expenditures,[231] the Director must use only funds appropriated to ODMR/DD for state match of Medicaid waiver services and county board subsidies for the transfer. If the beds are located in a county served by a county MR/DD board that initiates or supports the beds' certification, the funds the Director is to transfer are to be funds that the Director has allocated to that county MR/DD board unless the amount of the allocation is insufficient to pay the entire nonfederal share of the Medicaid costs for the beds. If the allocation is insufficient, the Director must use as much of such funds allocated to other counties as needed to make up the difference.

County MR/DD board subsidies

Elimination of county MR/DD board subsidies

(R.C. 5126.0511, 5126.12, 5126.15, and 5126.44; Section 337.30.40)

Prior law required ODMR/DD to make subsidy payments to county MR/DD boards. Subsidies, and payment schedules of subsidies, are provided in ongoing law in the Revised Code. The act removes the requirement that ODMR/DD make a general purpose subsidy and subsidies for service and support administration[232] and supported living[233] to county MR/DD boards in ongoing Revised Code law.

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[231] See "***Responsibility for nonfederal share of Medicaid expenditures***" above.

[232] Subject to available funds, ODMR/DD is required to pay county MR/DD boards an annual subsidy for service and support administration. General subsidy and service and support administration funds are reduced under current law in instances of county

However, the act includes in uncodified law an appropriation earmark for fiscal years 2008 and 2009 that requires ODMR/DD to use certain funds appropriated to ODMR/DD to pay each county MR/DD board an amount that is equal to the amount the boards received in fiscal year 2007 under the general purpose, service and support administration, and supported living subsidies.

As discussed above, a county MR/DD board is required under certain circumstances to pay the nonfederal share of Medicaid expenditures for Medicaid case management services and ODMR/DD-administered home and community-based services.[234] Prior law specified sources of money that a county MR/DD board could use to pay the nonfederal share of these Medicaid expenditures. Included were funds a county MR/DD board receives from ODMR/DD under the general purpose, service and support administration, and supported living subsidies. The act removes specific mention of these subsidies as an allowable source of funds to pay the nonfederal share consistent with the act's removal of the subsidies from ongoing law. Instead, the act includes a general provision that permits a county MR/DD board to use any subsidy payments it receives from ODMR/DD.

County MR/DD boards arranging supported living

(R.C. 5126.40, 5123.16 (new), 5123.169, 5123.182 (repealed), 5126.41, 5126.42, 5126.43, 5126.431 (repealed), 5126.45, 5126.451 (repealed), and 5126.47)

As discussed above, the act removes from the Revised Code supported living subsidies that ODMR/DD provides to county MR/DD boards. In a related change, the act provides that after receiving notice from ODMR/DD of the amount of state funds to be distributed to it for planning, developing, contracting for, and providing supported living (rather than after receiving notice of the amount to be distributed under the supported living subsidy), a county MR/DD board must arrange for supported living on behalf of and with the consent of individuals with MR/DD based on the individual's service plans.

Continuing law requires a county MR/DD board to arrange for supported living in one or more methods using state funds and other money that the county

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MR/DD boards that have an effective tax rate of less than one and one-half mills for general operations of the board (R.C. 5126.15).

[233] ODMR/DD is required under current law to make allocations to county MR/DD boards to be used for planning, development, contracting for, and providing supported living (R.C. 5126.44).

[234] See "***Responsibility for nonfederal share of Medicaid expenditures***" above.

MR/DD board designates for supported living. One of the methods is to contract with providers selected by the individuals to be served. The other two methods are to enter into shared funding agreements with state agencies, local public agencies, or political subdivisions or to provide direct payment or vouchers to be used to purchase supported living. The act provides that county MR/DD boards' system of arranging supported living does not apply to Medicaid-funded supported living. This means, for example, that a county MR/DD board cannot enter into contracts for Medicaid-funded supported living. Federal law prohibits an agency that is not the single state agency from contracting with providers for services eligible for funding through Medicaid.

Prior law prohibited a county MR/DD board from contracting with a provider to provide both residence and supported living services to an individual with MR/DD. This prohibition did not apply if:

- The provider was under contract with the county MR/DD board for both residence and services on July 17, 1990, and the contract was renewed.

- The provider had a pre-1995 contract being transferred from the state to the county, and the contract was being renewed.[235]

- The provider lived in the residence and provided services to three or fewer individuals who resided in the residence at any one time.

- The provider was an association of family members related to two or more persons residing in the residence and provided services to four or fewer individuals who resided in the residence at any one time.

The act eliminates these provisions. Instead, new residence restrictions are added to the qualifications for supported living certification discussed previously.

As discussed previously, county MR/DD boards may use certain methods provided for in statute to arrange for supported living. Prior law provided a process by which a county MR/DD board could develop a supported living service plan arranged by those methods. That law did not require the Director of MR/DD to determine the extent to which a county board may provide supported living under these arrangements. The act requires the Director of MR/DD to adopt rules

[235] Prior to July 1, 1995, county MR/DD boards could elect to enter into contracts with providers to provide supported living services to individuals with MR/DD or have ODMR/DD enter into such contracts for the county. Beginning July 1, 1995, county boards were required to assume administration of the contracts ODMR/DD had entered into.

that establish the extent to which a county MR/DD board may provide supported living.

County MR/DD board service contracts

(R.C. 5126.035 (repealed), 5126.036 (repealed), 5123.043, 5126.038, 5126.055, and 5126.06)

Prior law established requirements for a contract between a county MR/DD board and a provider of services to an individual with mental retardation or a developmental disability. Such a service contract was to include a general operating agreement component and an individual service needs addendum. The service contract had to comply with all applicable statewide Medicaid requirements if the provider was to provide home and community-based services administered by ODMR/DD or Medicaid case management services.

Prior law also required that each service contract between a county MR/DD board and a provider of services provide for the parties to follow certain mediation and arbitration procedures if a party took or does not take an action under the contract that caused the aggrieved party to be aggrieved or if the provider was aggrieved by the board's termination of the contract. The mediation and arbitration procedures also applied if a provider was aggrieved by a board's refusal to enter into a service contract.

The act repeals the law governing service contracts between county MR/DD boards and providers of services, including the law governing mediation and arbitration procedures regarding service contracts.

Prior law provided that a county MR/DD board had local administrative authority to contract with a person or entity chosen by a person receiving services if the person or entity chosen was qualified and agrees to provide the services. The act eliminates this authority.

Priority waiting lists for home and community-based services

(R.C. 5126.042)

Continuing law requires a 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 ODMR/DD-administered home and community-based services 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:

(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.

The act extends for two more years, fiscal years 2008 and 2009, a limitation that no more than 400 individuals may receive such priority.

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. ODMR/DD is required to adopt rules establishing the criteria to be used by county MR/DD boards. These provisions are scheduled to expire December 31, 2007. The act extends these provisions through December 31, 2009.

County MR/DD board reporting requirements

(R.C. 5126.12)

Prior law required a county MR/DD board to submit an itemized report of income and operating expenditures for the preceding calendar year to the Director of MR/DD by March 13. The act changes the due date to April 13.

Prior law required a county MR/DD board to report to the Director the total annual cost per enrollee for operation of programs and services operated by the county in the preceding calendar year. The report had to include a grand total of all programs operated, the cost of the individual programs, and the sources of funds applied to each program. The act eliminates this reporting requirement.

Targeted case management services

(Section 337.30.60)

County MR/DD boards are required to pay the nonfederal portion of targeted case management costs to ODMR/DD. The Director of MR/DD is required to withhold any amount owed to ODMR/DD from subsequent disbursements from any appropriation item or money otherwise due to a nonpaying county.

The act permits ODMR/DD and the Department of Job and Family Services to enter into an interagency agreement requiring ODMR/DD to pay the Department of Job and Family Services the nonfederal portion of the cost of targeted case management services paid by county MR/DD boards and the Department of Job and Family Services to pay the total cost of targeted case management claims.

MR/DD Futures Study Committee

(Section 337.20.20)

The act creates the MR/DD Futures Study Committee to prepare a report by March 30, 2008, regarding the funding design of county MR/DD board services and other related matters the Committee is charged to study. On submission of the report, the Committee ceases to exist.

The Committee members are to be appointed not later than 30 days after the act's effective date. The act specifies the membership and appointing authorities as follows:

(1) One member who is an individual eligible to receive services from a county MR/DD board, appointed by the Governor, but who is not a state employee, employee or member of a county MR/DD board, or employee or governing board member of an MR/DD service provider;

(2) One member who is an immediate family member of an individual eligible to receive services from a county MR/DD board, appointed by the Governor, but who is not a state employee, employee or member of a county MR/DD board, or employee or governing board member of an MR/DD service provider;

(3) Two members who are members of the House of Representatives, appointed by the Speaker of the House of Representatives, with one from the majority party and one from the minority party;

(4) Two members of the Senate, appointed by the President of the Senate, with one from the majority party and one from the minority party;

(5) Four members of statewide advocacy organizations for individuals with MR/DD, appointed as follows: (a) one by the Board of Trustees of the Arc of Ohio, (b) one by the Board of Directors of the Ohio League for the Mentally Retarded, (c) one by the Board of People First of Ohio, (d) one by the governing board of an organization designated by the Director of MR/DD;

(6) One member appointed by the Board of Directors of the Ohio Self-Determination Association;

(7) One member appointed by the governing authority of the Ohio Superintendents of County Boards of Mental Retardation and Developmental Disabilities Association;

(8) Two members appointed by the Board of Trustees of the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities;

(9) One member appointed by the Board of Trustees of the County Commissioners' Association of Ohio;

(10) Two members appointed by the Board of Trustees of the Ohio Provider Resource Association;

(11) One member appointed by the Board of Directors of the Ohio Health Care Association;

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

(13) Two members appointed by the Governor who are representatives of statewide labor organizations representing public employees;

(14) The Director of MR/DD.

The Director of the MR/DD is required to serve as the chairperson of the Committee. A majority of the Committee constitutes a quorum, which is required for the transaction of any business.

Members are to serve without compensation except as their service is considered a part of their regular employment duties. The Director of MR/DD is authorized to provide reasonable reimbursement of travel expenses to Committee members.

The act requires the Committee to meet at times and locations determined by the chairperson to do all of the following:

(1) Review the effectiveness, efficiency, and sustainability of current uses of funding for the state's MR/DD system;

(2) Propose alternatives for effectively funding the nonfederal share of Medicaid expenditures for home and community-based services for individuals with MR/DD, including the act's amendments to those provisions;

(3) Identify the potential for reducing administrative costs in the state's MR/DD system;

(4) Propose alternatives for effectively balancing revenues available to the state and the county MR/DD boards to fulfill their responsibilities for funding, planning, and monitoring the delivery of MR/DD services;

(5) Examine the efficiency and effectiveness of the current system of separate and concurrent MR/DD accreditation, licensure, certification, quality assurance, and quality improvement activities and propose changes to improve that system;

(6) Recommend steps necessary to assure the long term financial sustainability of MR/DD services to meet current and future needs while affording counties the ability to make local decisions about the priority uses of local tax levy funding;

(7) Determine the feasibility and potential benefits of regional planning approaches to meet specialized and intensive service needs;

(8) Propose improvements needed and action steps to fully realize the principle of self-determination by individuals with MR/DD;

(9) Evaluate the effectiveness and equity of the state's MR/DD systems' uses of waiting and service substitution lists, priority populations, and having separate acuity instruments that vary by service setting;

(10) Review other matters the Director of MR/DD considers appropriate for evaluations.

MOTOR VEHICLE COLLISION REPAIR REGISTRATION BOARD (CRB)

- Eliminates the Motor Vehicle Collision Repair Registration Fund.

Motor Vehicle Collision Repair Registration Fund; Occupational Licensing and Regulatory Fund

(R.C. 4743.05 and 4775.08)

Numerous state licensing boards deposit funds and fees received into the same fund, the Occupational Licensing and Regulatory Fund, (Fund 4K9), to accommodate cash flow needs for the various boards. Under former law, fees and fines collected under Motor Vehicle Repair Operators Licensing Law (R.C. Chapter 4775.) were deposited into the Motor Vehicle Collision Repair Registration Fund. The act eliminates this fund, and authorizes the fees and fines collected to be deposited instead into the Occupational Licensing and Regulatory Fund.

DEPARTMENT OF NATURAL RESOURCES (DNR)

- Requires all moneys that the Division of Forestry receives from federal grants, payments, and reimbursements to be credited to the continuing State Forest Fund.

- Requires the Director of Natural Resources, rather than the Chief of the Division of Water in the Department of Natural Resources, to administer the law governing coastal erosion and to issue permits for the construction of shore structures.

- Eliminates the requirements that the Division of Real Estate and Land Management in the Department administer the coastal management program, lakefront property lease program, and submerged lands preserves program, thus providing for the Director's direct administration of those programs.

- Decreases the maximum amount of the fine imposed for a violation of the law governing coastal erosion from $1,000 to $500 for each

offense, and retains the stipulation that each day of violation constitutes a separate offense.

- Relocates certain statutes governing coastal erosion, and makes related technical changes.

- Clarifies that a person who held, immediately prior to April 6, 2007, a valid permit issued under the Coal Surface Mining Law must provide performance security in accordance with continuing law rather than in accordance with that Law as it existed prior to that date.

- Revises the eligibility requirements for an applicant or person holding a valid coal mining and reclamation permit to provide performance security together with reliance on the Reclamation Forfeiture Fund through payment of an additional tax on the severance of coal.

- Eliminates a provision that prohibited money from the Reclamation Forfeiture Fund from being used for coal preparation plants or coal refuse disposal areas not located within a permitted area of a mine if the performance security was provided together with reliance on the Reclamation Forfeiture Fund, and prohibits the use of money from the Fund to supplement the performance security of an applicant or permittee that has provided performance security without reliance on the Fund.

- Specifies that the determination of the rate of the additional severance tax on coal at the end of a fiscal biennium that is based on the balance of the Reclamation Forfeiture Fund begins July 1, 2007, and that the requirement that the Chief of the Division of Mineral Resources Management certify the balance of the Fund to the Tax Commissioner at the end of a fiscal biennium begins July 1, 2009.

- Removes from the definition of "lime mining wastes" in the Industrial Minerals Mining Law references to residual solid or semisolid materials generated from lime or limestone mining and processing operations, instead adds residual solid or semisolid materials generated from lime calcining, lime processing, or lime manufacturing operations, and also removes other references to limestone and limestone mining in the definition.

- Removes a restriction in the definition of "beneficial use" in the Industrial Minerals Mining Law that specified that lime mining wastes had to be used within a lime mining and reclamation area.

- Authorizes the Chief of the Division of Wildlife, with the approval of the Director, to engage in campaigns and special events that promote wildlife conservation by selling or donating wildlife-related materials, memberships, and other items of promotional value.

- Authorizes not more than $200,000 of the annual expenditures from the continuing Wildlife Boater Angler Fund to be used to pay for equipment and personnel costs involved with boating access construction, improvements, and maintenance on lakes on which the operation of gasoline-powered watercraft is permissible.

Crediting of federal moneys to State Forest Fund

(R.C. 1503.05)

Continuing law creates the State Forest Fund, establishes purposes related to state forests for which it must be used, and specifies sources of funding for it. The act adds that all moneys received by the Division of Forestry from federal grants, payments, and reimbursements must be paid into the state treasury to the credit of the State Forest Fund.

Coastal erosion control and coastal management

Transfer of Chief of Division of Water's coastal erosion authority to Director of Natural Resources

(R.C. 1506.38, 1506.39, 1506.40, 1506.42, 1506.43, 1506.46, and 1506.47)

Law retained in part by the act requires the Chief of the Division of Water in the Department of Natural Resources to act as the erosion agent of the state for the purpose of cooperating with the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers. The Chief of the Division of Water must cooperate with the Secretary in carrying out, and may conduct, investigations and studies concerning the prevention, correction, and control of shore erosion along Lake Erie and damage from it and the control of inundation of improved property along the Lake Erie shoreline. The act instead requires the Director to act as the erosion agent of the state for those purposes.

Under law largely retained by the act, the Chief, in the discharge of his duties under the law governing coastal erosion, may call to his assistance, temporarily, any engineers or other employees in any state department, or in The Ohio State University or other state-financed educational institutions, for the purpose of devising the most effective and economical methods of controlling shore erosion and damage from it and controlling the inundation of improved property by the waters of Lake Erie. The act authorizes the Director, rather than the Chief, to call for such assistance.

Law retained in part by the act authorizes the state, acting through the Chief, to enter into agreements with counties, townships, municipal corporations, park boards, conservancy districts, other political subdivisions, or any state departments or divisions for the purpose of constructing and maintaining projects to control erosion along the Ohio shoreline and islands of Lake Erie and in any rivers and bays that are connected with Lake Erie and any watercourses that flow into it. Also, under law largely retained by the act, the Chief may enter into a contract with any county, township, municipal corporation, conservancy district, or park board that has such an agreement with the state for the construction of a shore erosion project. The act authorizes the Director, rather than the Chief, to enter into such agreements and contracts.

Law largely unchanged by the act states that any action taken by the Chief under the law governing coastal erosion cannot be deemed in conflict with certain powers and duties conferred upon and delegated to federal agencies and to municipal corporations under the Ohio Constitution or as provided by the law governing the use and control of Lake Erie water and soils by municipal corporations. The act replaces the reference to the Chief with a reference to the Director.

Law retained in part by the act authorizes the Chief, in cooperation with the Division of Geological Survey, to prepare a plan for the management of shore erosion in the state along Lake Erie, its bays, and associated inlets, revise the plan whenever it can be made more effective, and make the plan available for public inspection. The act authorizes the Director, rather than the Chief, to prepare the plan and states that the plan may be prepared in cooperation with appropriate offices and divisions, including the Division of Geological Survey. Also, under law largely unchanged by the act, the Chief may establish a program to provide technical assistance on shore erosion control measures to municipal corporations, counties, townships, conservancy districts, park boards, and shoreline property owners. The act authorizes the Director, rather than the Chief, to establish the program.

Shore structure permits

(R.C. 1506.40)

Law generally retained by the act prohibits a person from constructing a beach, groin, or other structure to control erosion, wave action, or inundation along or near the Ohio shoreline of Lake Erie, including related islands, bays, and inlets, without first obtaining a shore structure permit from the Chief of the Division of Water. A temporary shore structure permit may be issued by the Chief or his authorized representative if it is determined necessary to safeguard life, health, or property.

Under law largely unchanged by the act, an applicant must provide appropriate evidence of compliance with any applicable provisions of the Coastal Management Law, the Division of Geological Survey Law, and the Division of Water Law as determined by the Chief. Each application or reapplication for a permit must be accompanied by a non-refundable fee prescribed by the Chief by rule.

Law generally retained by the act requires the Chief, if the application is approved, to issue a permit to the applicant authorizing construction of the project. In addition, law largely unchanged by the act requires the Chief to conduct an adjudication hearing when an applicant requests such a hearing in writing within 30 days after the issuance of a notice of disapproval of the application. Finally, the Chief must limit the period during which a construction permit is valid and establish reapplication requirements governing a construction permit that expires before construction is completed.

The act requires the Director of Natural Resources, rather than the Chief, to perform all of the above activities.

Elimination of Division of Real Estate and Land Management's coastal management authority

(R.C. 1504.02)

Prior law required the Division of Real Estate and Land Management in the Department of Natural Resources, on behalf of the Director, to administer the coastal management program and to consult with and provide coordination among state agencies, political subdivisions, the United States and agencies of it, and interstate, regional, and areawide agencies to assist the Director in executing his duties and responsibilities under that program and to assist the Department as the lead agency for the development and implementation of the program. Prior law also required the Division, again on behalf of the Director, to administer the

lakefront property lease program and the submerged lands preserves program. The act eliminates those requirements, thus providing for the Director's direct administration of those programs.

Penalties

(R.C. 1506.99)

Under law retained in part by the act, the penalty for violating the law governing coastal erosion is a fine of not less than $100 nor more than $1,000 for each offense. Each day of violation constitutes a separate offense. The act decreases the amount of the maximum fine to $500, and retains the stipulation that each day of violation constitutes a separate offense.

Technical changes

(R.C. 317.08, 1506.01, 1506.41, 1506.44, 1506.45, 1506.48, 1521.01, 1521.99, and 6121.04)

The act relocates certain sections of the Revised Code and makes related technical changes to reflect the changes in the Director's authority that are discussed above.

Performance security requirements for coal mining operations

Applicability of requirements

(R.C. 1513.08)

Law retained in part by the act states that after a coal mining and reclamation permit application has been approved, but before the permit is issued, the applicant must file with the Chief of the Division of Mineral Resources Management, on a form prescribed and furnished by the Chief, the performance security required under the Coal Surface Mining Law. The act clarifies that a permittee that held a valid coal mining and reclamation permit immediately prior to April 6, 2007, must provide, not later than a date established by the Chief, performance security in accordance with the Coal Surface Mining Law as it exists on the provision's effective date, rather than in accordance with the Law as it existed prior to April 6, 2007, by filing it with the Chief on a form that the Chief prescribes and furnishes. Accordingly, for purposes of the performance security requirements under that Law, "applicant" is deemed to include such a permittee. In addition, the act removes the requirement that the performance security be filed before the permit is issued. As a result of the above changes, the performance security requirements established in the Coal Surface Mining Law as it exists on

the provision's effective date apply to a person having a valid coal mining and reclamation permit in addition to an applicant for a permit.

Continuing law requires performance security to be provided either without reliance on the Reclamation Forfeiture Fund in an amount equal to the estimated cost of reclamation or with reliance on the Reclamation Forfeiture Fund through payment of an additional tax on the severance of coal and payment of an amount of $2,500 per acre of land. For purposes of providing performance security together with reliance on the Reclamation Forfeiture Fund, law generally retained by the act requires that in order to be eligible to provide performance security in that manner, an applicant must have held a coal mining and reclamation permit issued under the Coal Surface Mining Law for any coal mining and reclamation operation for a period of not less than five years. The act modifies the eligibility requirement by stating that in order for an applicant to be eligible to provide performance security in that manner, the applicant, an owner and controller of the applicant, or an affiliate of the applicant must have held a coal mining and reclamation permit issued under the Coal Surface Mining Law for any coal mining and reclamation operation for a period of not less than five years. The act defines "owner and controller of the applicant" as a person that has any relationship with the applicant that gives the person authority to determine directly or indirectly the manner in which the applicant conducts coal mining operations. Under the act, "affiliate of the applicant" is defined as an entity that has a parent entity in common with the applicant.

Reclamation Forfeiture Fund

(R.C. 1513.18)

Continuing law creates the Reclamation Forfeiture Fund consisting in part of all money that becomes the property of the state from the forfeiture of the performance security that is required to be filed by the holder of a coal mining and reclamation permit and conditioned on the permittee's faithful performance of all the requirements of the Coal Surface Mining Law and the permit. Continuing law specifies the uses of money in the Fund. It also specifies that money in the Fund cannot be used for reclamation of land or water resources affected by material damage from subsidence or mine drainage that requires extended water treatment after reclamation is completed under the terms of a permit. In addition, prior law prohibited the use of money in the Fund for coal preparation plants or coal refuse disposal areas not located within a permitted area of a mine if performance security for the area of the land was provided together with reliance on the Fund. The act eliminates that prohibition. The act adds that money from the Fund cannot be used to supplement the performance security of an applicant or permittee that has provided performance security without reliance on the Fund.

Severance tax on coal

(R.C. 5749.02)

Continuing law levies an additional severance tax of 14¢ per ton on coal produced from an area under a coal mining and reclamation permit for which the permit holder has chosen to provide performance security together with reliance on the Reclamation Forfeiture Fund through payment of the additional severance tax. If at the end of a fiscal biennium the balance of the Reclamation Forfeiture Fund is equal to or greater than $10 million, the rate levied must be 12¢ per ton. If at the end of a fiscal biennium the balance of the Fund is at least $5 million, but less than $10 million, the rate levied must be 14¢ per ton. If at the end of a fiscal biennium the balance of the Fund is less than $5 million, the rate levied must be 16¢ per ton. Not later than 30 days after the close of a fiscal biennium, the Chief of the Division of Mineral Resources Management must certify to the Tax Commissioner the amount of the balance of the Reclamation Forfeiture Fund as of the close of the fiscal biennium, and any necessary adjustment of the rate must take effect on January 1 of the following year. The act retains the additional severance tax and the adjustments of the rate of that severance tax based on the balance of the Reclamation Forfeiture Fund, but specifies that the determination of the rate based on the balance of the Fund begins July 1, 2007. The act also retains the requirement that not later than 30 days after the close of a fiscal biennium, the Chief certify to the Tax Commissioner the amount of the balance of the Fund at the close of the fiscal biennium, but specifies that that requirement begins July 1, 2009.

"Lime mining wastes" and "beneficial use" definitions in Industrial Minerals Mining Law

(R.C. 1514.081 and 1514.40)

For purposes of the Industrial Minerals Mining Law, prior law defined "lime mining wastes" as residual solid or semisolid materials generated from lime or limestone mining and processing operations, including, without limitation, lime kiln dust, scrubber sludge from lime kiln operations, lime or limestone materials not meeting product specification, lime hydrating materials, and other lime or limestone mining, processing, or calcining materials associated with lime or limestone mining or processing. The act instead defines "lime mining wastes" as residual solid or semisolid materials generated from lime calcining, lime processing, or lime manufacturing operations, including, without limitation, lime kiln dust, scrubber sludge from lime kiln operations, lime materials not meeting product specification, lime hydrating materials, and other lime manufacturing, processing, or calcining materials associated with lime processing.

In addition, law retained in part by the act defines "beneficial use" as the use of lime mining wastes within a lime mining and reclamation area for land application when it is utilized for agronomic purposes at standard agronomic rates as determined by standard soil testing, for land reclamation in accordance with the Industrial Minerals Mining Law and rules adopted under it, including, but not limited to, use as fill material in quarries, and for any other purposes designated by the Chief of the Division of Mineral Resources Management, including demonstration projects approved by the Chief. The act removes the restriction in the definition that specified that lime mining wastes had to be used within a lime mining and reclamation area. In addition, the act adds that fill material in the definition is defined by rule.

Wildlife conservation promotions

(R.C. 1531.06)

Continuing law authorizes the Chief of the Division of Wildlife to sell or donate conservation-related items or items that promote wildlife conservation. The act adds that the Chief, with the approval of the Director of Natural Resources, also may engage in campaigns and special events that promote wildlife conservation by selling or donating wildlife-related materials, memberships, and other items of promotional value.

Uses of Wildlife Boater Angler Fund

(R.C. 1531.35)

Continuing law creates the Wildlife Boater Angler Fund and requires it to be used for boating access construction, improvements, and maintenance on lakes on which the operation of gasoline-powered watercraft is permissible. The act adds that not more than $200,000 of the annual expenditures from the Fund may be used to pay for equipment and personnel costs involved with those activities.

OHIO BOARD OF NURSING (NUR)

- Allows nursing students to practice in Ohio while participating in a component of a prelicensure program located in another jurisdiction.

- Extends the date by which the Board of Nursing must issue a report on its evaluation of the Medication Aide Pilot Program to a date that is not later than the 181st day after the Board issues its 75th medication aide certificate.

- Extends the date on which the pilot program ends, which is also the date on which any nursing home or residential care facility is authorized to use certified medication aides to the 31st day after the Board issues its report evaluating the pilot program.

- Requires the Board to request from each nursing home and residential care facility participating in the pilot program, on the 91st day after the day the Board issues a medication aide certificate to the 75th individual, the data the Board requires participating homes and facilities to report under rules. Also requires that homes and facilities comply with this request not later than the 31st day after the day the Board makes its request.

- Requires the Board to notify legislative leaders of the Senate and House of Representatives when the Board denies an application from a nursing home or residential care facility for participation in the pilot program and the reasons for the denial.

- Provides that a nursing home is eligible to participate in the pilot program if it has been found free from deficiencies in medication administration in its most recent Department of Health survey or inspection, rather than in its two most recent surveys or inspections.

- Requires an individual seeking to be certified as a medication aide to ask that information from the Federal Bureau of Investigation be included as part of the individual's criminal records check only if the individual has not lived in Ohio for at least five years.

- Establishes the Nursing Education Study Committee composed of members of the General Assembly, nursing educators, and representatives of nursing associations, hospitals, and the Ohio Board of Regents.

- Requires the Committee to study and report, not later than December 31, 2008, on strategies to produce more nursing faculty and ways to address the issue of insufficient clinical placement opportunities.

Nursing students from other states

(R.C. 4723.32)

Under continuing law, the prohibition against engaging in the practice of nursing without a license does not apply to a nursing student enrolled in and actively pursuing completion of a prelicensure nursing education program approved by the Board of Nursing.

The act allows a nursing student to practice in Ohio while enrolled in a prelicensure program located in another jurisdiction. The student must be participating in a component of the program and the program must be approved by a board of nursing that is a member of the National Council of State Boards of Nursing. As with students enrolled in programs located in Ohio, the student must practice under the auspices of the program and act under the supervision of a registered nurse serving as a faculty member or teaching assistant.

Medication Aide Pilot Program

(R.C. 4723.621, 4723.63, 4723.64, 4723.65, and 4723.66)

The Board of Nursing is authorized to conduct a pilot program on the use of medication aides in 80 nursing homes and 40 residential care facilities. The Board was to conduct an evaluation of the pilot program and prepare a report of its findings and recommendations by March 1, 2007, and the program was to be concluded by July 1, 2007. At the conclusion of the pilot program, medication aides certified by the Board may be used in any nursing home or residential care facility.

The act makes the following changes in the laws governing the medication aide pilot program and the subsequent authority to use medication aides in any nursing home or residential care facility:

(1) The Board must issue its report evaluating the pilot program not later than the 181st day after the Board issues a medication aide certificate to the 75th individual.

(2) The pilot program is to end on the 31st day after the report is issued.

(3) On the day the Board issues its 75th medication aide certificate, the Board must post a notice on its web site indicating the date on which any nursing home or residential care facility may use medication aides.

(4) On the 91st day after the Board issues its 75th medication aide certificate, the Board must request from each participating facility the data the

Board requires to be reported in conducting its evaluation of the pilot program. The participating facilities must submit the requested data not later than the 31st day after the Board's request is made.

(5) A nursing home is eligible to be selected for participation if it was found to be free from deficiencies related to the administration of medication in its most recent survey or inspection by the Department of Health, as opposed to having to meet the existing requirement of being free from such deficiencies in its two most recent surveys or inspections.

(6) When the Board denies an application for participation by a nursing home or residential care facility, the Board must notify, in writing, the President and Minority Leader of the Senate and the Speaker and Minority Leader of the House of Representatives. The notice must specify the reasons for the denial.

(7) An applicant for certification as a medication aide is required to ask the Bureau of Criminal Identification and Investigation to also request that the Federal Bureau of Investigation provide information on the applicant only if the applicant has not lived in Ohio for at least five years.

Nursing education study committee

(Section 747.10)

Committee membership

The act establishes the Nursing Education Study Committee consisting of the following members:

(1) Two members of the House of Representatives who are members of the same political party as the Speaker of the House of Representatives, to be appointed by the Speaker of the House of Representatives;

(2) One member of the House of Representatives who is a member of the largest political party of which the Speaker of the House of Representatives is not a member, to be appointed by the Speaker of the House of Representatives;

(3) Two members of the Senate who are members of the same political party as the President of the Senate, to be appointed by the President of the Senate, one of whom shall be designated as the temporary chairperson of the Committee;

(4) One member of the Senate who is a member of the largest political party of which the President of the Senate is not a member, to be appointed by the President of the Senate;

(5) One member of the Ohio Nurses Association, to be appointed by the Ohio Nurses Association;

(6) One member of the Licensed Practical Nurse Association of Ohio, to be appointed by the Licensed Practical Nurse Association of Ohio;

(7) One member of the Ohio Board of Nursing, to be appointed by the Ohio Board of Nursing;

(8) One member of the Ohio Board of Regents, to be appointed by the Ohio Board of Regents;

(9) One member of the Ohio Hospital Association, to be appointed by the Ohio Hospital Association;

(10) One member of the Ohio Association of Community Health Agencies, to be appointed by the Ohio Association of Community Health Agencies;

(11) One nursing educator from an associate degree nursing program, to be appointed by the Speaker of the House of Representatives;

(12) One nursing educator from a baccalaureate degree nursing program, to be appointed by the Speaker of the House of Representatives;

(13) One nursing educator from a graduate degree nursing program, to be appointed by the Speaker of the House of Representatives;

(14) One nursing educator from a private university with a nursing education program, to be appointed by the President of the Senate;

(15) One nursing educator from a state university with a nursing education program, to be appointed by the President of the Senate.

Appointments to the Committee must be made not later than September 1, 2007. Members of the Committee are required to serve without compensation.

The member of the Committee designated as the temporary chairperson must call the initial meeting of the Committee. At that initial meeting, the Committee is required to elect a chairperson, by majority vote, from among its members. Thereafter, the chairperson is required to call meetings as the chairperson considers necessary for the Committee to carry out its duties.

Topics of study and required report

The Committee is required to study the current nurse faculty shortage and the shortage of clinical placement sites for nursing education programs, with a

focus on the critical needs of nursing faculty at Ohio's institutions of higher education and alternatives to clinical placement sites. In conducting the study, the Committee must consider all of the following:

- Salary disparities for nursing faculty members as compared to faculty members in other disciplines and as compared to salaries for master's degree-prepared nurses in health care settings;

- The feasibility and financial implications of providing a refundable state income tax credit to nursing faculty members for a specified limited period of time;

- The feasibility and financial implications of providing assistantships at a stipend level to nurses pursuing master's degrees or doctoral study who agree to become nursing faculty members in Ohio;

- The extent to which clinical simulation devices could be used to decrease the number of hours nursing students are required to spend providing care directly to patients in a clinical setting, including the portion of clinical hours that could be obtained in a clinical simulation laboratory;

- The disparity in the number of clinical hours students are required to complete in Ohio nursing education programs;

- The extent to which nursing education programs are adequately preparing nurses to provide care in community or public health settings, particularly to the geriatric population;

- Ways in which nurses may be more effectively utilized to train or educate health care workers providing care in community or public health settings.

Not later than December 31, 2008, the Committee is required to prepare and submit a report to the General Assembly that focuses on strategies to produce more nursing faculty and ways to address the issue of insufficient clinical placement opportunities. The report also must include a recommendation for a range of clinical hours nursing students are required to complete to assure adequate practice experience. Upon submission of the report, the Committee will cease to exist.

OCCUPATIONAL THERAPY, PHYSICAL THERAPY, & ATHLETIC TRAINERS BOARD (PYT)

- Requires that all fines collected by the appropriate section of the Ohio Occupational Therapist, Physical Therapist, and Athletic Trainers Board except for those collected for specified violations of the law be deposited in the Occupational Licensing and Regulatory Fund.

Deposit of fines collected under the Occupational Therapist, Physical Therapist, and Athletic Trainer Law

(R.C. 4755.03)

Continuing law requires that all fees collected and assessed under the Occupational Therapist, Physical Therapist, and Athletic Trainer Law (R.C. Chapter 4755.) by the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board be deposited into the state treasury to the credit of the Occupational Licensing and Regulatory Fund. Continuing law also specifies that one-half of the fines collected for violations of the prohibitions against practicing or holding oneself out as an occupational therapist, an occupational therapy assistant, a physical therapist, or an athletic trainer without the appropriate license or permit must be distributed to the appropriate section of the Board (Occupational Therapist Section, Physical Therapist Section, or Athletic Trainer Section) and then paid into the state treasury to the credit of the Occupational Licensing and Regulatory Fund. The other halves of these fines collected must be distributed to the treasury of the municipal corporation in which the offense was committed or, if the offense was committed outside the limits of a municipal corporation, to the treasury of the county in which the offense occurred.

The act adds that except for a fine collected for a violation of the prohibitions described immediately above, all fines collected and assessed by the *appropriate section* of the Board, rather than the Board under former law, also must be deposited in the Occupational Licensing and Regulatory Fund.

PUBLIC DEFENDER COMMISSION (PUB)

- Requires the county auditor, in a county that pays counsel to represent indigent persons instead of using a county or joint county public defender to represent them, to report periodically to the State Public Defender

(instead of the Ohio Public Defender Commission) the amounts paid out to appointed counsel for indigent persons.

- Allows the county auditor, with permission from and notice to the board of county commissioners, to certify the county auditor's report to the State Public Defender for reimbursement of the amounts paid out to appointed counsel for indigent persons.

- Provides that the State Public Defender may pay the requested reimbursement only if it is accompanied by a financial disclosure form and affidavit of indigency or if a court has certified by electronic signature that a financial disclosure form and affidavit of indigency has been completed by the indigent person and are available for inspection.

Amounts paid out to appointed counsel for indigent persons

(R.C. 120.33)

Under prior law, in a county that has adopted a resolution to pay counsel to represent indigent persons instead of using a county public defender or joint county public defender to represent them, the county auditor was required to report periodically, but not less than annually, to the board of county commissioners and to the Ohio Public Defender Commission the amounts paid out to counsel for indigent persons pursuant to the approval of the court. The board of county commissioners, after review and approval of the auditor's report, then could certify it to the State Public Defender (the SPD) for reimbursement. Under the act, the county auditor must report periodically, but not less than annually, to the board of county commissioners and to the *SPD* the amounts paid out to counsel for indigent defendants pursuant to the approval of the court. As an alternative to the board of county commissioners certifying the auditor's report to the SPD for reimbursement, the act also allows the county auditor, *with permission from and notice to the board of county commissioners*, to certify the auditor's report to the SPD for reimbursement.

Prior law provided that, if a request for reimbursement was not accompanied by a financial disclosure form and an affidavit of indigency completed by the indigent person on forms prescribed by the SPD, the SPD was prohibited from paying the requested reimbursement. The act instead provides that the SPD may pay a requested reimbursement only if the request for reimbursement is accompanied by a financial disclosure form and an affidavit of indigency completed by the indigent person on forms prescribed by the SPD or if

the court certifies by electronic signature as prescribed by the SPD that a financial disclosure form and affidavit of indigency have been completed by the indigent person and are available for inspection.

DEPARTMENT OF PUBLIC SAFETY (DHS)

- Requires the Registrar of Motor Vehicles, commencing with deputy registrar contract awards that have a start date of July 1, 2008, to incorporate in the review process a score for whether or not a proposer states that the proposer will accept payment by means of a financial transaction device for all Department of Public Safety transactions conducted at that deputy registrar location.

- Permits a county auditor that is designated a deputy registrar to choose to accept payment by means of a financial transaction device for all such transactions conducted at the auditor's office.

- Allows the use of license plates that do not designate a vehicle as state-owned (known as "cover plates") when a motor vehicle is used to assist a crime victim and a state agency determines that the situation warrants the use of cover plates.

- Prohibits a law enforcement officer from issuing a ticket for specifically defined secondary traffic offenses at a motor vehicle checkpoint or safety inspection unless the officer either makes an arrest or issues a ticket for a violation other than a secondary traffic offense, and prohibits a law enforcement agency that conducts a motor vehicle checkpoint expressly related to a secondary traffic offense from issuing tickets for a secondary offense, but allows the agency to distribute information at such a checkpoint.

- Clarifies the law by providing that a motor vehicle dealer may contract for and receive a documentary service charge for all retail and wholesale motor vehicle sales and leases, including those involving a retail installment sale and those not involving a retail installment sale, including leases, cash transactions, and transactions in which consumers obtain their own financing.

Certain deputy registrars may or must accept credit and debit cards

(R.C. 4503.102)

Law unchanged by the act authorizes the Registrar of Motor Vehicles to implement a program permitting the payment of motor vehicle registration taxes and fees, driver's license and commercial driver's license fees, and any other taxes, fees, penalties, or charges imposed or levied by the state by means of a financial transaction device, which includes credit cards and debit cards. The Registrar did not act on this authority.

The act requires the Registrar, commencing with deputy registrar contract awards that have a start date of July 1, 2008, and for all contract awards thereafter, to incorporate in the review process a score for whether or not a proposer states that the proposer will accept payment by means of a financial transaction device, including credit cards and debit cards, for all Department of Public Safety transactions conducted at that deputy registrar location.

A deputy registrar cannot be required to accept payment by means of a financial transaction device unless the deputy registrar agreed to do so in the deputy registrar's contract. The Bureau of Motor Vehicles cannot be required to pay any costs incurred by a deputy registrar who accepts payment by means of a financial transaction device that result from the deputy registrar's acceptance of payment by means of a financial transaction device.

The act permits a county auditor that is designated a deputy registrar to choose to accept payment by means of a financial transaction device, including credit cards and debit cards, for all such transactions conducted at the auditor's office in the auditor's capacity as deputy registrar. The BMV cannot be required to pay any costs incurred by a county auditor who accepts payment by means of a financial transaction device that result from the auditor's acceptance of payment by means of a financial transaction device.

State vehicle identification exemption for vehicles transporting crime victims

(R.C. 4503.35)

In general, law unaffected by the act requires vehicles owned or leased by the state to bear license plates with a color other than that used for license plates on private vehicles, a special serial number, and the words "Ohio State Car" (R.C. 4503.23, not in the act). Continuing law grants exceptions to this general requirement for all of the following: (1) vehicles furnished by the state for use by elective state officials, (2) vehicles owned and operated by political subdivisions of the state, (3) vehicles operated by state highway patrol troopers, and (4)

vehicles operated by or on behalf of any person involved in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed. The license plates used on these vehicles are commonly known as "cover plates."

The act creates another exception to the general requirement that state vehicles be identified by the license plate as state-owned. It allows the use of cover plates when a motor vehicle is used to assist a crime victim and a state agency determines that the situation warrants the use of cover plates.

Limited secondary traffic offense enforcement at vehicle checkpoints and inspections

(R.C. 4511.093)

Under continuing law, certain traffic offenses are considered "secondary offenses" because law enforcement officers are prohibited from causing a motor vehicle operator to stop the motor vehicle for the *sole purpose* of determining whether the specific traffic violation has occurred, issuing a ticket, citation, or summons for the particular violation, or causing the arrest of or commencing a prosecution of a person for such a violation. Under laws unaffected by the act, the following offenses are considered secondary offenses:

(1) The operation of a motor vehicle by a temporary instruction permit holder if the total number of occupants of the vehicle exceeds the total number of occupant restraining devices originally installed in the motor vehicle by its manufacturer or each occupant of the vehicle is not wearing all of the available elements of a properly adjusted occupant restraining device (R.C. 4507.05(A));

(2) The curfew provisions prohibiting a temporary instruction permit holder under 18 from operating a motor vehicle between the hours of midnight and 6 a.m. unless accompanied by the holder's parent or guardian who holds a current, valid license and is not in violation of the OVI prohibitions (R.C. 4507.05(F)(2));

(3) The curfew provisions prohibiting a probationary license holder under 17 from operating a motor vehicle between the hours of midnight and 6 a.m. unless accompanied by the holder's parent or guardian (R.C. 4507.071(B)(1)(a));

(4) The curfew provisions prohibiting a probationary license holder over 17, but under 18, from operating a motor vehicle between the hours of 1 a.m. and 5 a.m. unless the holder is accompanied by the holder's parent or guardian (R.C. 4507.071(B)(1)(b));

(5) The operation of a motor vehicle by a probationary license holder if the total number of occupants of the vehicle exceeds the total number of occupant

restraining devices originally installed in the motor vehicle by its manufacturer or each occupant of the vehicle is not wearing all of the available elements of a properly adjusted occupant restraining device (R.C. 4507.071(E));

(6) The operation of a motor vehicle (other than a taxicab or public safety vehicle) while transporting a child who is at least four but not older than fifteen years of age in a motor vehicle that is required to be equipped with seat belts at the time of manufacture or assembly without having the child properly restrained either in a child restraint system or in an occupant restraining device (R.C. 4511.81(C));

(7) The operation of an automobile or a school bus if the operator is not wearing all available elements of an occupant restraining device, the operation of an automobile if each front seat passenger is not wearing all available elements of an occupant restraining device, or the occupation of an automobile front seat as a passenger without wearing all available elements of an occupant restraining device (R.C. 4513.263(B)).

The act defines "secondary traffic offense" as a violation described in (1) through (7) above and establishes restrictions for enforcing the secondary offenses at motor vehicle checkpoints and motor vehicle safety inspections. Under the act, no law enforcement officer who stops the operator of a motor vehicle in the course of an authorized sobriety or other motor vehicle checkpoint operation or a motor vehicle safety inspection may issue a ticket, citation, or summons for a secondary traffic offense unless, in the course of the checkpoint operation or safety inspection, the officer first determines that an offense other than a secondary traffic offense has occurred and either places the operator or a vehicle occupant under arrest or issues a ticket, citation, or summons to the operator or a vehicle occupant for an offense other than a secondary offense.

The act also establishes that if a law enforcement agency operates a motor vehicle checkpoint for an express purpose related to a secondary traffic offense, the agency may not issue a ticket, citation, or summons for any secondary traffic offense at such a checkpoint but may use such a checkpoint operation to conduct a public awareness campaign and distribute information.

Documentary service charges by motor vehicle dealers

(R.C. 4517.261; Section 745.10)

The act provides that a motor vehicle dealer may contract for and receive a documentary service charge for a retail or wholesale sale or lease of a motor vehicle. The charge must be specified in writing without itemizing the individual

services provided. A documentary service charge must be the lesser of the following:

(A) The amount allowed in a retail installment sale, which is a maximum of $250 (R.C. 1317.07, not in the act);

(B) 10% of the amount the buyer or lessee is required to pay pursuant to the contract, excluding tax, title, and registration fees, and any negative equity adjustment.

The act states that the enactment of these provisions is intended as a clarification of continuing law allowing documentary service charges to be assessed in all retail and wholesale sales and leases of motor vehicles, including those involving a retail installment sale and those not involving a retail installment sale, including leases, cash transactions, and transactions in which consumers obtain their own financing.

The act further provides that the enactment of these provisions expresses the legislative intent of the General Assembly "currently and at the time of the original enactment of the Revised Code" by recognizing that motor vehicle dealers may charge, and historically have charged, a documentary service charge in all transactions, including those involving a retail installment sale and those not involving a retail installment sale, including leases, cash transactions, and transactions in which consumers obtain their own financing.

PUBLIC UTILITIES COMMISSION (PUC)

- Authorizes the Public Utilities Commission (PUCO) to adopt rules providing for the enforcement of federal consumer protection provisions related to the delivery and transportation of household goods in interstate commerce.

- Codifies the Commercial Vehicle Information Systems and Networks Fund and renames it the "Federal Commercial Vehicle Transportation Systems Fund."

- Requires the PUCO to establish a study mechanism to make recommendations for a funding program for the Telecommunications Relay Service and submit the recommendations to the General Assembly by January 1, 2009.

Enforcement of federal laws with respect to transportation of household goods in interstate commerce

(R.C. 4921.40)

The act authorizes the Public Utilities Commission (PUCO) to adopt rules providing for the enforcement of the consumer protection provisions of Title 49 of the United States Code related to the delivery and transportation of household goods in interstate commerce. (Federal law expressly permits state enforcement of these provisions. *See* 49 U.S.C. 14710.) Any fine or penalty imposed as a result of this enforcement must be deposited into the state treasury to the credit of the GRF.

Federal Commercial Vehicle Transportation Systems Fund

(R.C. 4923.26; Section 369.10)

The act codifies the Commercial Vehicle Information Systems and Networks Fund, which consists of money received from the U.S. Department of Transportation's Commercial Vehicle Intelligent Transportation Systems Infrastructure Deployment Program. Money in the fund is used by the Public Utilities Commission to deploy the Ohio Commercial Vehicle Information Systems Networks Project and to improve the safety of motor carrier operations through electronic exchange of data by means of on-highway electronic systems. The act also renames the fund the "Federal Commercial Vehicle Transportation Systems Fund."

Telecommunications Relay Service

(Section 749.10)

Telecommunications Relay Service (TRS) is a federally required service that provides assistance to communicatively impaired persons to engage in communication by telephone (47 C.F.R. 64.601 et seq.). Under continuing law, for tax years 2006 through 2008, a taxpayer that provides TRS can claim a *refundable* credit against the corporation franchise tax. (R.C. 5733.56, not in the act.) The act requires, consistent with certain state policy,[236] the PUCO to

[236] Ongoing Telecommunications Alternative Regulation law states that it is state policy to (1) consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services that are subject to the PUCO's jurisdiction, (2) not unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services, and (3) protect the affordability of telephone service for low-income subscribers through the continuation of lifeline assistance programs (R.C. 4927.02, not in the act).

establish a study mechanism to make recommendations for a competitively neutral TRS funding program for costs incurred in calendar year 2009 and thereafter. The PUCO must submit the recommendations to the General Assembly by January 1, 2009.

PUBLIC WORKS COMMISSION (PWC)

- Implements the provisions of Section 2p(B)(1), Article VIII of the Ohio Constitution regarding the issuance of general obligation bonds for local government capital improvement projects.

Issuance of bonds for public infrastructure capital improvements

(R.C. 151.08, 164.03, and 164.08)

Section 2p(B)(1), Article VIII of the Ohio Constitution (effective November 8, 2005) authorizes the issuance of general obligation bonds and other obligations of the state to finance or assist in the financing of capital improvement projects of local subdivisions. The act implements this provision by requiring the Ohio Public Facilities Commission to issue not more than $120 million in principal amount of obligations in any of the first five fiscal years of issuance and not more than $150 million in principal amount of obligations in any of the next five fiscal years.[237] The act limits the total amount of obligations that can be issued pursuant to Section 2p(B)(1), Article VIII of the Ohio Constitution to not more than $1,350,000,000. None of these obligations can be issued, however, until at least $1,199,500,000 aggregate principal amount of infrastructure obligations have been issued pursuant to Section 2m, Article VIII of the Ohio Constitution. The Public Works Commission allocates these bond proceeds among the state's district public works integrating committees.

RACING COMMISSION (RAC)

- Requires the entire ½ of 1% of all moneys wagered on wagering pools other than win, place, and show that is retained by horse-racing permit

[237] The act also authorizes, in each case, the issuance of the principal amount of obligations that in any prior fiscal year could have been but were not issued within these fiscal year limits (R.C. 151.08(B)(2)).

holders to be paid as a tax to the Tax Commissioner and deposited into the State Racing Commission Operating Fund.

Deposit of entire ½ of 1% of all amounts wagered on exotic wagering into State Racing Commission Operating Fund

(R.C. 3769.087)

Continuing law requires horse-racing permit holders to retain an additional ½ of 1% of all moneys wagered each racing day on wagering pools other than win, place, and show. Of this additional amount, ¼ of 1% must be paid as a tax to the Tax Commissioner, who in turn must pay this percentage into the State Racing Commission Operating Fund. The remaining ¼ of 1% is retained by the permit holder, who must use ½ of it for purse money.

Temporary law enacted by H.B. 530 of the 126th General Assembly carved an exception to these provisions by requiring, from July 1, 2006, through June 30, 2007, that the entire ½ of 1% of all moneys wagered each racing day on wagering pools other than win, place, and show that was retained by horse-racing permit holders be paid as a tax to the Tax Commissioner, who in turn had to pay the amount into the State Racing Commission Operating Fund. The act makes this provision permanent.

BOARD OF REGENTS (BOR)

Ohio Innovation Partnership

- Directs the Chancellor of the Board of Regents to establish and administer the Ohio Innovation Partnership.

- Includes in the Ohio Innovation Partnership the Choose Ohio First Scholarship Program to competitively assign scholarships among four-year Ohio institutions for initiatives to recruit Ohio residents as students in the fields of science, technology, engineering, math, and medicine, or science, technology, engineering, math, or medical education.

- Sets the minimum Choose Ohio First scholarship as $1,500 and the maximum scholarship as one-half of the highest in-state undergraduate tuition charged by all state universities.

- Includes in the Ohio Innovation Partnership the Ohio Research Scholars Program to award state funds to recruit scientists to the faculties of state universities and the Northeastern Ohio Universities College of Medicine.

- Requires the Chancellor to make competitive awards, subject to the approval by the Controlling Board, based on the programs' common goals of enhancing regional educational and economic strengths and meeting the needs of the state's regional economies.

Financial assistance programs

- Disqualifies from Ohio College Opportunity Grants (1) students entering most for-profit proprietary schools after the 2007-2008 academic year and (2) students entering education programs after 2007-2008 the sponsors of which do not have certificates of authorization from the Board of Regents.

- Requires the Chancellor to review applications from proprietary schools for certificates of authorization within 22 weeks.

- Eliminates the Student Workforce Development Grant.

- Permanently directs the Chancellor to allocate up to $165,000 in each fiscal year to provide scholarships for the Washington Center internship program, if the Chancellor determines that sufficient funds are available.

Co-located technical colleges

- Allows technical colleges that are co-located with state university branches to offer baccalaureate-oriented associate degree programs, subject to approval from the Chancellor.

- Specifies that new or expanded programs offered at co-located campuses must be approved by the Chancellor.

Other provisions

- Would have created the Higher Education Statewide Purchasing Consortium to be administered by the Inter-University Council of Ohio, and would have required all state institutions of higher education to enter into price agreements offered by the Consortium (VETOED).

- Beginning in the 2008-2009 academic year, requires each state institution of higher education to provide students with an itemized list of fees and charges owed by the student.

- Requires the Chancellor to develop a critical needs rapid response system to address critical workforce shortages in emerging growth industries.

- Directs the Chancellor to design and implement a three-year pilot project in the vicinity of Clark, Greene, and Montgomery counties to test how a public-private collaborative may enhance P-16 education and workforce development in the field of health information and imaging technology.

- Creates the "Commission on the Future of Health Care Education and Physician Retention in NW OH."

- Revises the investment authority of state institutions of higher education.

- Changes the deadline for the Chancellor's report, required under Sub. H.B. 2 of the 127th General Assembly, for improvements in higher education from September 28, 2007, to March 31, 2008.

Ohio Innovation Partnership

(R.C. 3333.60 to 3333.70)

The act directs the Chancellor of the Board of Regents to establish and administer the Ohio Innovation Partnership, to consist of the Choose Ohio First Scholarship Program and the Ohio Research Scholars Program. Under those two programs, the Chancellor, subject to Controlling Board approval, makes awards to any state university[238] or the Northeastern Ohio Universities College of Medicine (NEOUCOM) for programs or initiatives that recruit students and scientists in the fields of science, technology, engineering, mathematics, and medicine (STEMM). The programs' stated purpose is to enhance regional educational and economic strengths and meet the needs of the state's regional economies.

[238] The 13 state universities are: University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

Awards may be granted for programs and initiatives to be implemented by a state university or NEOUCOM alone or in collaboration with other state institutions of higher education, nonpublic Ohio universities or colleges, or other public or private Ohio entities. If the Chancellor makes an award for a program or initiative that will be implemented in collaboration with other public or private Ohio institutions of higher education, the collaborating universities or colleges may receive some portion of that award directly, consistent with all terms of the Ohio Innovation Partnership.

The Chancellor must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to administer the programs.

Choose Ohio First Scholarship Program

(R.C. 3333.38, 3333.61, 3333.64, 3333.66, and 3345.32)

The Choose Ohio First Scholarship Program assigns a number of scholarships to state universities and NEOUCOM to recruit Ohio residents as undergraduate students in the STEMM fields or in STEMM education. The scholarships will be awarded to each participating eligible student as a grant to the state university or college the student is attending and must be reflected on the student's tuition bill. But the act clarifies that "Choose Ohio First scholarships are student-centered grants from the state to students to use to attend a university or college and are not grants from the state to universities or colleges."

A student who receives a Choose Ohio First scholarship must receive at least $1,500 but no more than one-half of the highest in-state, undergraduate instructional and general fees charged by all state universities. (If Miami University is implementing the pilot tuition restructuring plan,[239] that university's instructional and general fees will be considered to be the average full-time, in-state undergraduate instructional and general fee amount after taking into account the Ohio Resident Scholarship and Ohio Leader Scholarship and any other credit provided to all Ohio residents.)

A nonpublic four-year Ohio institution of higher education may submit a proposal for Choose Ohio First scholarships if the proposal is in collaboration with

[239] Originally recognized in Am. Sub. H.B. 95 of the 125th General Assembly. In the spring of 2003, the board of trustees of Miami University adopted a new tuition plan whereby all undergraduate students attending the Oxford campus are charged the same tuition, based on the nonresident tuition rate, regardless of whether the student is a resident or nonresident of Ohio. This plan took effect in the summer term of 2003. The university awards financial assistance to all Ohio-resident students in the form of an Ohio Resident Scholarship and an Ohio Leader Scholarship.

a state university or NEOUCOM. If the Chancellor grants a nonpublic institution scholarships, the nonpublic institution must comply with all the rules and requirements that apply to the scholarship.

The Chancellor must endeavor to make awards under the Choose Ohio First Scholarship Program in such a way that at least 50% of the students receiving the scholarships are involved in a co-op or internship program in a private industry or a university laboratory. The act also requires the Chancellor to encourage proposals for initiatives to recruit Ohio residents enrolled in colleges and universities in other states or countries to return to Ohio for *graduate* studies in the STEMM fields or STEMM education. If such proposals are submitted and meet the Chancellor's competitive criteria for an award, the act requires the Chancellor, upon approval from the Controlling Board, to give at least one of those proposals preference for an award.

The act states that money appropriated for the Choose Ohio First Scholarship Program in each fiscal year be used for scholarships in the following academic year.

Ohio Research Scholars Program

(R.C. 3333.61 and 3333.67)

The Ohio Research Scholars Program awards grants to recruit scientists to the faculties of state universities or NEOUCOM. Money awarded to state universities or NEOUCOM must be deposited into new or existing endowment funds. The university or college must maintain the amount awarded and use income generated from that award, in addition to other institutional, public, or private resources, to finance the approved proposal.

Selection of awards

(R.C. 3333.61, 3333.62, 3333.63, and 3333.64)

The act requires the Chancellor to establish a competitive process for making awards under the two programs. Upon completion of that process, the Chancellor must make a recommendation to the Controlling Board asking for approval of each award selected by the Chancellor. Any state university or NEOUCOM may apply for one or more awards under one or both programs. Private four-year Ohio institutions also may apply directly for Choose Ohio First scholarships, if the proposal will be implemented in collaboration with a state university of NEOUCOM. Applicants must submit a proposal and other required documentation in the manner and form prescribed by the Chancellor for each award it seeks.

The Chancellor must determine which proposals to recommend for awards in each fiscal year, and the amount of the awards, based on one or more of the following criteria:

(1) The quality of the program and the extent to which additional resources will enhance its quality;

(2) The extent to which the proposal is integrated with the strengths of the regional economy;

(3) The extent to which the proposal is integrated with centers of research excellence within the private sector;

(4) The amount of other institutional, public, or private resources, whether monetary or nonmonetary, that the proposal pledges to leverage;

(5) The extent to which the proposal is collaborative with other public or nonpublic Ohio institutions of higher education;

(6) The extent to which the proposal is integrated with the institution's mission and does not displace existing resources already committed to the mission;

(7) The extent to which the proposal facilitates a more efficient utilization of existing faculty and programs;

(8) The extent to which the proposal meets a statewide educational need;

(9) The demonstrated productivity or future capacity of the students or scientists to be recruited;

(10) The extent to which the proposal will create additional capacity in educational or economic areas of need;

(11) The extent to which the proposal will encourage students who received degrees in the STEMM fields from two-year institutions to transfer to state universities or NEOUCOM to pursue baccalaureate degrees in STEMM;

(12) The extent to which the proposal encourages students enrolled in state universities to transfer into STEMM programs;

(13) The extent to which the proposal facilitates the completion of a baccalaureate degree in a cost-effective manner, for example, by facilitating students' completing two years at a two-year institution and two years at a state university or NEOUCOM;

(14) The extent to which the proposal allows attendance at a state university or NEOUCOM of students who otherwise could not afford to attend;

(15) The extent to which other institutional, public, or private resources pledged to the proposal will be deployed to assist in sustaining students' scholarships over their academic careers;

(16) The extent to which the proposal increases the likelihood that students will successfully complete their degree programs in STEMM or in STEMM education; or

(17) The extent to which the proposal ensures that a student who is awarded a scholarship is appropriately qualified and prepared to successfully complete a degree program in STEMM or STEMM education.

The Chancellor must endeavor to select proposals so that the aggregate statewide amount of other institutional, public, and private money pledged to all of the proposals in each fiscal year equals at least 100% of the aggregate amount of the money awarded under both programs that year. In other words, the Chancellor must try to ensure that the total amount of other money pledged must equal or exceed the amount of money awarded under both the Choose Ohio First Scholarship and the Ohio Research Scholars programs. The value of institutional, public, or private industry co-ops and internships in which Choose Ohio First scholarship recipients participate counts toward the statewide aggregate amount of other money.

The Chancellor also must endeavor to distribute awards so that all regions of the state benefit from the economic development impact of the programs, and must guarantee that students from all regions of the state are able to participate in the scholarship program.

Prior to deciding awards, the Chancellor must conduct at least one annual public meeting where an employee of the Chancellor summarizes the submitted proposals, and each institution with a pending proposal has the opportunity to review the summary and answer questions or respond to concerns about the proposal raised by the Chancellor's staff.

Agreements

(R.C. 3333.65)

Once the Chancellor and Controlling Board approve an award, the Chancellor must require that the institution enter into an agreement governing the use of the award. The agreement must contain the terms the Chancellor determines to be necessary, including performance measures, reporting

requirements, and an obligation to fulfill pledges of other institutional, public, or nonpublic resources for the proposal. If the institution violates the terms of its agreement, the Chancellor may require that school to repay the award plus interest at the federal short-term rate determined each year by the Tax Commissioner.

If the Chancellor makes an award to a collaborative program or initiative, the Chancellor may enter into an agreement with the collaborating universities or colleges that permits awards to be received directly by the collaborating universities or colleges consistent with the terms of the program or initiative. If there is such an agreement, the terms must be consistent with the requirements listed above.

Commitment to future funding

(R.C. 3333.68)

The act allows the Chancellor, subject to Controlling Board approval, to commit to giving a proposal preference for future awards after the current fiscal biennium, conditionally based on: future appropriations from the General Assembly; the institution's adherence to the agreement it entered into with the Chancellor, including its fulfillment of pledges from other institutional, public, or nonpublic resources; and with respect to Choose Ohio First scholarships, a demonstration that the students receiving the scholarship are satisfied with the state universities or colleges selected by the Chancellor to offer the scholarships. The Chancellor and Controlling Board must not commit to any award for more than five fiscal years at a time, but when a commitment for future awards expires, the institution may reapply.

Monitoring and reporting

(R.C. 3333.69 and 3333.70)

The Chancellor must monitor each initiative for which an award is granted to ensure fiscal accountability, operating progress, and desired outcomes.

Not later than December 31, 2008, and annually thereafter by December 31, the Chancellor must submit to the General Assembly a report on the academic and economic impact of the Ohio Innovation Partnership. The report must include (1) progress and performance metrics for each initiative that received an award in the previous fiscal year, (2) economic indicators of the impact of each initiative, and all initiatives as a whole, on regional economies and the statewide economy, and (3) the Chancellor's strategy in assigning Choose Ohio First scholarships among state universities and colleges and how the actual awards fit that strategy.

Ohio College Opportunity Grants

(R.C. 3333.122)

The act disqualifies students from receiving an Ohio College Opportunity Grant (OCOG) who first enroll after the 2007-2008 academic year in proprietary schools certified by the State Board of Career Colleges and Schools. The act also disqualifies students from receiving the OCOG who first enroll after 2007-2008 in two-year education programs sponsored by private institutions of higher education, if the sponsors do not have certificates of authorization from the Board of Regents. Eligible students who enrolled in these institutions or programs in 2006-2007 or 2007-2008 may continue to apply for the OCOG.

Certificates of authorization for proprietary schools

(R.C. 1713.031)

Under the act, in order for students who first enroll after 2007-2008 in two-year education programs sponsored by for-profit proprietary schools to qualify for an Ohio College Opportunity Grant (OCOG), the school must have a certificate of authorization from the Board of Regents. The act requires that the Chancellor of the Board of Regents review applications from for-profit proprietary schools for certificates of authorization within 22 weeks.

Student Workforce Development Grant

(Repealed R.C. 3333.29; R.C. 3333.04 and 3333.38)

The act eliminates the Student Workforce Development Grant. The grant provided tuition assistance to students enrolled full-time in Ohio proprietary schools and pursuing an associate or bachelor's degree. According to the Board of Regents, the grant for the 2006-2007 academic year was $300.

Washington Center internship program scholarships

(R.C. 3333.36; Section 375.40.50)

The act, in permanent codified law, directs the Chancellor of the Board of Regents, if the Chancellor determines that sufficient funds are available from the Board of Regents' General Revenue Fund appropriations, to allocate up to $165,000 in each fiscal year for payments to the Washington Center. The payments are to be applied to scholarships provided to undergraduates of Ohio's four-year public and private institutions of higher education selected to participate in the Center's internship program. The amount of each scholarship is not to exceed the amount specified for the scholarships in each biennial operating

appropriations act. (The act, in uncodified law, appropriates $125,000 each in fiscal years 2008 and 2009 for the scholarship program, and sets the amount of scholarships at $1,800 for students enrolled in an institution that operates on quarters and $2,300 for students enrolled in an institution that operates on semesters. It requires the Washington Center to provide matching scholarships of at least $1,300 per student.)

Co-located technical colleges

(R.C. 3357.01 and 3357.13)

All but one of the eight technical colleges in Ohio are co-located with a branch campus of a state university.[240] Co-located campuses are partnerships that share buildings, resources, and location.

The act explicitly allows technical colleges that are co-located with university branches to offer "baccalaureate-oriented associate degree programs," provided that any new or expanded programs on co-located campuses must be approved by the Chancellor of the Board of Regents. The act requires the Chancellor to determine whether the proposed program would promote cooperation and collaboration between co-located institutions while minimizing duplication. (It is not clear whether this proviso requires the Chancellor's approval only for new or expanded baccalaureate-oriented programs offered by a co-located technical college, or *all* new or expanded programs offered by the technical college or its co-located university branch.)

The act defines baccalaureate-oriented associate degree programs as curricular programs of not more than two years that (1) grant academic credit for courses comparable to first- and second-year courses offered by other accredited colleges and universities and (2) enable students either to transfer to colleges and universities and earn baccalaureate degrees or to terminate academic study after two years with an associate degree.

[240] Belmont Technical College with OU-Belmont; Central Ohio Technical College with OSU-Newark; James A. Rhodes State College with OSU-Lima; Marion Technical College with OSU-Marion; North Central State College with OSU-Mansfield; Stark State College of Technology with Kent State-Stark; and Zane State College with OU-Zanesville. Hocking College is not co-located.

Higher Education Statewide Purchasing Consortium

(R.C. 3345.35; Section 375.30.27)

The Governor vetoed provisions that would have created the Higher Education Statewide Purchasing Consortium to be administered by the Inter-University Council of Ohio. The Consortium would have consisted of the purchasing officer of each state institution of higher education,[241] and the board of trustees of each institution would have been required to enter into price agreements offered and administered by the Consortium.

Specifically, each state institution of higher education would have been required to: (1) enter into price agreements to purchase services, supplies, and major items commonly purchased by state institutions of higher education, (2) double the amount the institution spends through the established price agreements every biennium over the preceding biennium, and (3) report to the Consortium monthly price agreement usage and any savings that result from purchasing through the Consortium.

The act also would have required the Chancellor, based on reports from the Consortium, to certify any cost savings reported by Consortium members as savings achieved through internal efficiencies, which are required for an increase in the proportional share of the State Share of Instruction.

Itemized higher education charges

(R.C. 3345.02)

Beginning in the 2008-2009 academic year, the act requires each state university, community college, state community college, university branch, and technical college to provide an itemized list of instructional fees, general fees, special purpose fees, service charges, fines, and any other fees or surcharges applicable to the student in each statement of estimated or actual charges owed by a student enrolled in the institution.

[241] As used in this section, "state institution of higher education" includes the 13 state universities, the Northeastern Ohio Universities College of Medicine, any community college, any state community college, any university branch, and any technical college.

Critical needs rapid response system

(R.C. 3333.50)

The act requires the Chancellor of the Board of Regents, in consultation with the Governor and the Department of Development, to "develop a critical needs rapid response system to respond quickly to critical workforce shortages in the state." Within 90 days of an identification of a critical workforce shortage in an emerging growth industry in the state, the Chancellor must submit to the Governor a proposal for addressing the shortage through initiatives of the Chancellor or institutions of higher education. The act does not specify an official or agency whose identification of a shortage triggers the proposal.

Health technology workforce development pilot project

(R.C. 3333.55)

The act establishes the Health Information and Imaging Technology Workforce Development Pilot Project, to be developed and implemented by the Chancellor of the Board of Regents, to test how a P-16 public-private collaborative project can enhance P-16 education and workforce development in the field of health information and imaging technology. The pilot project will operate in fiscal years 2008 through 2010 in the vicinity of Clark, Greene, and Montgomery counties. In designing the pilot project, the Chancellor may address the following goals stated by the act:

(1) Increase the number of students taking and mastering high-level science, technology, engineering, or mathematics courses and pursuing careers in those subjects;

(2) Increase the number of students pursuing professional careers in health information and imaging technology upon receiving related technical education and professional experience; and

(3) Unify efforts among schools, career centers, post-secondary programs, and employers in a region for career and workforce development, preservation, and public education.

The act specifies that the project participants include the Clark-Shawnee Local School District, the Springfield City School District, the Greene County Career Center,[242] Clark State Community College, Central State University, Wright State University, Cedarville University, Wittenberg University, the

[242] Greene County Career Center is a joint vocational school district.

University of Dayton, and private employers in the health information and imaging technology industry in the vicinity of Clark, Greene, and Montgomery counties selected by the Board of Regents. For the third year of the project, the Board of Regents may add the Dayton City School District and the Xenia City School District. Wittenberg University must be the lead coordinating agent, and Clark State Community College must be the fiscal agent for the pilot project.

The project may engage in such activities as increased academic intervention in related areas of study, after-school and summer intervention programs, tutoring, career and job fairs and other promotional and recruitment activities, externships, professional development, field trips, academic competitions, development of related specialized study modules, development of honors programs, and development and enhancement of dual high school and college enrollment programs. Presumably, it may include other activities as well. The Chancellor also must create an "advisory council," made up of representatives of the participating entities, to coordinate, monitor, and evaluate the project and to submit an annual activity report. The report must be submitted to the Chancellor by a date specified by the Chancellor.

Commission on Health Care Education and Physician Retention in NW OH

(Section 263.30.30)

The act creates the "Commission on the Future of Health Care Education and Physician Retention in NW Ohio" to prepare a report that examines and makes recommendations regarding graduate medical education in northwest Ohio. The Commission is to be composed of the following members:

(1) Six representatives of health care providers in northwest Ohio, none of whom is from the same organization;

(2) Six representatives of the health care profession in northwest Ohio, composed of the following individuals:

--One from the College of Medicine at the University of Toledo;

--One from the northwest Ohio chapter of the Ohio Nurses Association;

--One from the Academy of Medicine of Toledo and Lucas County;

--One from the Northwest Ohio Pediatric Society;

--One geriatric medicine physician; and

--One osteopathic physician affiliated with Ohio University College of Osteopathic Medicine.

(3) Three representatives from northwest Ohio business and labor organizations, composed of the following individuals:

--One from the Toledo Area Regional Chamber of Commerce;

--One from the labor community of northwest Ohio;

--One from the health insurance industry.

(4) Three representatives of health care consumers in northwest Ohio, none of whom may be currently employed or affiliated with a health system or health insurer;

(5) Nine representatives of state and local government, composed of the following individuals:

--Two members of the House, one from the minority party and one from the majority party;

--Two members of the Senate, one from the minority party and one from the majority party;

--One township trustee of northwest Ohio;

--Two representatives of northwest Ohio municipal corporations, only one of whom may be from the City of Toledo; and

--Two representatives of county commissioners, only one of whom may be from Lucas County.

The Governor, Speaker of the House, and President of the Senate are required to appoint an equal number of Commission members under each category of Commission members described above.[243] The members must be appointed not later than 30 days after the act's effective date.

The Commission must first meet not later than 30 days after all appointments are made. The chairperson and vice-chairperson are to be elected

[243] The act does not specify the appointing authority for specific members of the Commission. If the Governor, Speaker, and President each attempt to appoint the representative of the Toledo Area Regional Chamber of Commerce, for example, there is no mechanism in the act to resolve any dispute.

from the Senate and House members. A majority constitutes a quorum for the transaction of business.

Members must serve without compensation, but may solicit public and private funds to defray any costs of the Commission. The Toledo Community Foundation or a similar organization is to provide meeting space and administrative support, and the Chancellor of the Board of Regents must serve as a resource to the Commission.

Not later than nine months after the act's effective date, the Commission must submit its report to the Governor and General Assembly, at which time the Commission ceases to exist. Topics to be addressed in the report must include the following:

(1) Ways to increase the number and retention of medical graduates in northwest Ohio;

(2) The status of the health care workforce in northwest Ohio;

(3) The role of the University of Toledo in the health care education of the surrounding region;

(4) Potential changes in federal and state statutes and rules regarding Medicaid support of graduate medical education; and

(5) Policy initiatives that the Governor and General Assembly may consider to strengthen graduate medical education opportunities and physician retention in northwest Ohio.

Investment of funds by state institutions of higher education

(R.C. 3345.05, 3354.10, 3357.10, and 3358.06)

Prior law required any board of trustees of a state "supported" university or college and certain ancillary facilities to invest only in publicly traded securities that average at least 25% of the average amount of the investment portfolio of the university or college over the course of the previous fiscal year in securities of the United States government or of its agencies or instrumentalities or a number of other specified investments. The act removes the publicly traded securities restriction and permits the board of trustees of all state institutions of higher education, including community college districts, technical college districts, and state community college districts, to pool any eligible funds, above those needed to meet the 25% requirement, with other institutional funds and invest those funds pursuant to certain criteria.

Sub. H.B. 2 report deadline

(Section 603.01)

Sub. H.B. 2 of the 127th General Assembly requires the Chancellor of the Board of Regents, by September 28, 2007, to report to the General Assembly and the Governor with recommendations for improvements in higher education. Specifically, the Chancellor's recommendations must address (1) making college more affordable and accessible, (2) encouraging graduates to remain in the state after earning their degrees, and (3) maximizing higher education as a driver of the state's economy. In addition, the report must include a plan as to how to appropriately utilize the Board of Regents to enhance higher education in Ohio. The act changes the deadline for the report from September 28, 2007, to March 31, 2008.

DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Creates the Lima Correctional Institution Study Committee to procure an independent study of the highest and best use for the Lima Correctional Institution.

Lima Correctional Institution Study Committee

(Section 377.20)

The act creates the Lima Correctional Institution Study Committee, effective July 1, 2007, and requires the Committee to procure a consultant through the Department of Rehabilitation and Correction to conduct an independent feasibility study of the highest and best use for the Lima Correctional Institution. The Committee consists of the Director of Rehabilitation and Correction or the Director's designee and the eight members of the Correctional Institution Inspection Committee. The Director of Rehabilitation and Correction will act as the Committee's chairperson.

The act directs the Lima Correctional Institution Study Committee and its independent consultant to utilize the staff of the Department of Rehabilitation and Correction for research and other support functions as much as feasible. The act requires the feasibility study to examine, at a minimum, all of the following:

(1) State and local correctional needs and the utilization of state and local facilities to service those needs;

(2) The current condition and value of the Lima Correctional Institution;

(3) The cost to reopen the Lima Correctional Institution in part or in whole for a correctional purpose;

(4) Alternative uses for the Lima Correctional Institution;

(5) The funding options to utilize the Lima Correctional Institution;

(6) The economic impact of the Lima Correctional Institution on the Lima region and the potential non-prison economic development opportunities for a closed prison facility.

The act requires the Lima Correctional Institution Study Committee to submit a report of its findings by April 1, 2008, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. After submitting its report, the Committee will cease to exist.

REHABILITATION SERVICES COMMISSION (RSC)

- Requires the Administrator of the Rehabilitation Services Commission to consult with the Director of Budget and Management and representatives of local rehabilitation services agencies to conduct an internal review of policies and procedures to increase efficiency and identify and eliminate duplicative practices.

Internal review

(Section 379.10)

The act requires the Administrator of the Rehabilitation Services Commission to consult with the Director of Budget and Management and representatives of local rehabilitation services agencies to conduct an internal review of policies and procedures to increase efficiency and identify and eliminate duplicative practices.

Any savings identified as a result of the internal review and the Auditor of State's performance audit[244] must be spent on community-based care.[245] The Administrator must seek Controlling Board approval before expending any funds identified.

SCHOOL FACILITIES COMMISSION (SFC)

- Adds a school district's net gain in interdistrict open enrollment students to its "valuation per pupil" for determining its eligibility ranking and local share for the Classroom Facilities Assistance Program (CFAP), if the gain is at least 10% of the district's formula ADM.

- Would have prevented a school district from being raised to a higher percentile for purposes of scheduling assistance under CFAP after (1) the district has entered the Expedited Local Partnership Program and (2) the district's voters have approved a bond issue to pay the district's portion of the basic project cost (VETOED).

- Revises the statutory debt limit for a school district that has already undertaken a classroom facilities project under the Exceptional Needs Program and that, within two years of the act's effective date, will proceed with another project under that program.

- Permits a school district undertaking a state-funded school facilities project to use the interest earned on district moneys in the project construction fund (not the interest earned on the state moneys in the fund) to pay the cost of facilities not included in the project.

- Permits a school district, at the end of its state-funded school facilities project, to transfer interest earned on district moneys remaining in the project construction fund to the district's permanent improvement fund or to leave that interest in the project construction fund (as alternatives to transferring it to the district's maintenance fund.

- Eliminates the Career-Technical School Building Loan Program.

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[244] See "***Performance audits***" under "**AUDITOR OF STATE.**"

[245] The act does not define "community-based care."

- Requires that existing money in the repealed Career-Technical School Building Assistance Fund be transferred into the Public School Building Fund (school facilities cash fund) and that remaining loan repayments under the repealed loan program be deposited into the Public School Building Fund.

Background to school facilities programs

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 (its "local share") 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 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 certain Big-Eight school districts to receive CFAP assistance earlier than otherwise permitted.

School district eligibility rankings

A school district's priority for state assistance under CFAP is based on the district's three-year average "adjusted valuation per pupil," where the district's taxable valuation per pupil is modified by a factor of the income of the district's taxpayers. All districts annually are ranked from lowest to highest average adjusted valuation per pupil and placed in percentiles. A district's percentile ranking determines when the district will be served by CFAP. Also, for most

districts, the portion of the basic project cost paid by the district (the "local share") is equal to its percentile ranking.[246] For example, a district ranked in the 20th percentile would pay 20% of the cost of the project and the state would pay the remaining 80%.

Factoring in open enrollment students

(R.C. 3318.011)

Under continuing law, a school district may establish an open enrollment policy that permits students from other districts to enroll tuition-free. The act adds students who are enrolled in a school district under an interdistrict open enrollment policy to the calculation of the district's valuation per pupil, if the district's net gain in open enrollment students is at least 10% of its formula ADM (average daily membership). A district's net gain in open enrollment students is the difference between (1) the number of students who are enrolled in the district under the district's open enrollment policy but are entitled to attend school elsewhere and (2) the number of the district's native students who are enrolled in another district under that district's open enrollment policy. Therefore, a district in which a sizable proportion of the students come from outside the district through open enrollment may count some of those students in its valuation per pupil. This change has the effect of lowering the district's valuation per pupil and potentially placing it in a lower percentile in the eligibility rankings. As a result, the district could qualify for CFAP assistance earlier than under prior law and could pay a smaller share of the basic project cost.

Expedited Local Partnership districts

(R.C. 3318.011 and 3318.36; conforming changes in R.C. 3318.01 and 3318.023)

The Governor vetoed a provision that would have placed a ceiling on a district's percentile ranking for determining when it is eligible for CFAP assistance if the district participates in the Expedited Local Partnership Program. Under this provision, if a district's voters had approved a bond issue to pay for its project under the Expedited Local Partnership Program, the district could not have been ranked, for purposes of determining its later CFAP eligibility, in a percentile higher than the one in which it was ranked when the bond issue was approved. In other words, under the vetoed provision a district could have "locked in" its

[246] However, for some districts, the district portion is based on the district's existing debt where relative wealth is also a factor. No district must pay more than 95% of the basic project cost. (R.C. 3318.032, not in the act.)

ranking upon approval of the bond issue to avoid falling behind on the eligibility list if its adjusted wealth per pupil increased.

Since the Governor vetoed that provision, the determination of an Expedited Local Partner district's priority for CFAP remains unchanged. It continues to be based on the district's current three-year average adjusted valuation per pupil. (Under continuing law, an Expedited Local Partner district's local share of its later CFAP project is the same percentage of the cost as determined by the Commission when the district entered into the Expedited Local Partnership agreement.)

Debt limitations for classroom facilities projects

(R.C. 133.061)

Background

All political subdivisions, including school districts, are subject to some debt limit that is based on a percentage of their property tax valuations. The percentage and the types of debt that are included in those limits vary among types of subdivisions. Generally, a school district may not incur debt in a net amount greater than 9% of its tax valuation. In addition, a school district usually may not submit to its voters the question of incurring debt in an amount that would make the district's net indebtedness exceed 4% of its tax valuation, unless both the state Superintendent of Public Instruction and the Tax Commissioner consent. However, continuing law permits school districts to issue debt exceeding both of these limits when undertaking state-assisted classroom facilities projects. That excess debt may include the district's portion of the cost of the project, the cost of site acquisition, and the cost of some local initiatives that are required by the School Facilities Commission.[247]

(In some instances, a district may be declared a "special needs district" by the Superintendent of Public Instruction, in which case the district's 9% debt limit is calculated based on its current tax valuation and either its valuation growth over the previous five years or its projected valuation growth over the next ten years.)

[247] The School Facilities Commission may require districts to pay the entire amount for certain items that do not meet the Commission's specifications but are closely associated with the state-assisted portion of the entire project. The Commission also refers to these so-called "required locally funded initiatives" as "project agreement locally funded initiatives," since a stipulation regarding their scope and cost to be paid entirely by the district is included in the project agreement between the Commission and district.

Additional excess debt permitted under the act

The act permits a school district that has already undertaken a classroom facilities project under the Exceptional Needs Program and that, within two years of the act's effective date, will proceed with another project under that program (consisting of a single building housing grades 6 through 12) to exceed the statuary debt limits in order to issue voter-approved bonds for that project. Under this provision, the district may issue bonds to pay the district's local share of the new project, the cost of site acquisition, and the cost of required local initiatives, *plus* the cost of local initiatives that are not required but are related to the project, as long as the district's total net indebtedness after issuing the bonds does not exceed 125% of the statutory debt limit. The provision refers to the district's *regular* total debt (9% of its tax valuation) and *not* the debt limitation of a special needs district (9% of its tax valuation plus a factor of either its historical or its projected valuation growth).

Use of interest on school district moneys

(R.C. 3318.12)

During the project

In all of the Commission's state-assisted programs, both the state and school district shares of the district's project cost must be deposited into a "project construction fund" from which the school district treasurer, upon approval of the Commission, is required to pay obligations related to the project when they become due. Generally, the state money in the fund must be spent first. (For Accelerated Urban projects, the state and district shares must be spent simultaneously.) Any interest earned on moneys in the fund is credited to the fund and, therefore, is available to be spent on the project.

The act permits a school district board to use all or part of the interest attributable to the district's share of moneys in the fund to the pay the cost of local initiatives that are not included in the state-assisted project but that are related to it. If a district board chooses to use some or all of the interest attributable to its share of the fund for local initiatives and, later, the cost of its state-assisted project exceeds the amount in the fund, the district must re-pay all of the interest used for those initiatives before further state funds will be released for the project.

After the project is completed

Continuing law specifies that, at the end of a district's state-assisted project, principal remaining in the project construction fund must be returned to the state and the district in proportion to their respective contributions to the fund. Any

interest attributable to the state's share must be returned to the state. However, prior law also required that interest attributable to the district's share be transferred to the district's project maintenance fund for use in maintaining the facilities acquired under the project.[248]

The act permits a school district board at its option, instead, to transfer the interest attributable to its share to its permanent improvement fund (where presumably it could be spent on any permanent improvement) or to leave that interest in the project construction fund to pay the cost of future projects. A district board also may choose to transfer the interest to the district's maintenance fund in the manner as was required under prior law.

Career-technical school building assistance loan program

(R.C. 3318.15; new R.C. 3318.47; repealed R.C. 3318.47, 3318.48, and 3318.49; Section 391.50)

In 2005, the School Facilities Commission took over from the Department of Education a program to provide 15-year, interest-free loans to school districts to construct, renovate, or purchase vocational classroom facilities or to purchase vocational education equipment.

The act eliminates this loan program. (It does not affect the Vocational School Facilities Assistance Program, under which joint vocational school districts may receive state money on a cost-sharing basis for a district-wide project.)

The act also provides that any amounts received from school districts in repayment of outstanding loans under the repealed program must be deposited into the Public School Building Fund, which is a fund containing mostly General Revenue Fund appropriations for the Commission to pay the state shares of school district projects under its programs. The act further requires the Director of Budget and Management to transfer to the Public School Building Fund any existing money in the repealed Career-Technical School Building Assistance Fund.

Finally, if a district with an outstanding loan from the repealed program is more than 60 days overdue on its service payment, an uncodified provision in the act requires the Department of Education, upon request of the Executive Director

[248] Generally, under a state-assisted school facilities project, each district must levy for 23 years, or otherwise set aside in each of 23 years, an amount equal to one-half mill of the district's valuation for the maintenance of the acquired facilities. Joint Vocational School Districts must set aside in each of 23 years an amount equal to 1.5% of the insurance value of the acquired facilities.

of the School Facilities Commission, to deduct from the district's foundation payments or other state payments the amount of the district's overdue service payment. That amount then is to be paid into the Public School Building Fund. This is similar to a codified provision of the repealed loan program.

SECRETARY OF STATE (SOS)

- Removes the exclusion that prohibits boards of elections from participating in state purchase contracts and establishes a process for boards of elections to participate in those contracts.

- Includes in the list of expenses to be divided between subdivisions conducting elections the cost of pollbooks and the costs for additional election expenses, including expenses for intermittent election employees, supplies for printing voter verified paper audit trails, and voting machine contractors, and defines a "subdivision" that must be charged for the costs of conducting an election as any board of county commissioners, board of township trustees, legislative authority of a municipal corporation, board of education, or any other board, commission, district, or authority that is empowered to levy taxes or permitted to receive a tax levy's proceeds.

- Permits a board of county commissioners, at the request of the Board of Elections, to establish an elections revenue fund for the purpose of accumulating revenue withheld by or paid to the county for the conduct of elections and permits the board of county commissioners to transfer money into that fund from any other fund of the political subdivision from which such payments lawfully may be made.

- Requires the Secretary of State to contract for the publication of election notices for statewide ballot issues at the direction of the Ohio Ballot Board, and requires the Ballot Board to reimburse the Secretary of State for the publication costs.

- Requires the Secretary of State to disseminate information regarding each statewide ballot issue as directed by the Ohio Ballot Board in order to inform the voters as fully as possible regarding each proposed constitutional amendment, proposed law, or referendum.

- Requires the Secretary of State to adopt rules permitting boards of elections, designated agencies, and other entities that conduct voter registration activities to electronically transmit name and address changes for voter registration records and rules to improve the speed of processing new voter registrations.

- Permits an elector whose minor child is confined in a hospital as a result of an accident or unforeseeable medical emergency occurring before the election to vote by absent voter's ballot.

- Permits a board of elections to report the outcome of election investigations to either the prosecuting attorney or the Secretary of State, instead of requiring the outcome to be reported to the prosecuting attorney only.

- Requires a person who is subpoenaed under the Election Law to personally appear before the grand jury, court, board, or officer to assert the protection of the person's constitutional rights, in order to avoid criminal prosecution for refusing to answer questions or produce required materials in response to the subpoena.

- Requires the Secretary of State to establish and maintain, instead of just establish, the statewide voter registration database and an online archive of prior directives and advisories.

- Requires the Secretary of State to conduct voter education outlining absent voter's ballot, provisional ballot, and other voting requirements.

- Makes grammatical changes to the law specifying the election duties of the Secretary of State and the boards of elections.

- Eliminates references to "clerks" of elections

- Changes from overnight delivery service to certified mail the process by which a board of elections must transmit a paper copy of a campaign finance statement to the Secretary of State when the board receives a paper filing from a campaign committee of a candidate for the office of member of the General Assembly or a candidate for the office of judge of a court of appeals.

- Specifies that the Campaign Finance Law prohibition against soliciting public contractors only prohibits the holder of the public office with ultimate responsibility for the award of a contract from soliciting the recipients of contracts awarded by that officeholder.

- Requires the Secretary of State to adopt rules that determine what constitutes a contract for the purchase of goods or services for the purpose of the public contractor solicitation restrictions, and specifies that nothing in these rulemaking requirements exempts the holder of a public office from the solicitation ban prior to the adoption of those rules.

- Increases from $500 to $10,000 the minimum cost of a contract awarded by a political subdivision that subjects the contractors to the public contractor contribution limits.

- Prohibits a fine from being imposed or a contract from being rescinded for a violation of the public contractor contribution limits if a contribution that violates the limits is made after the contract is awarded and it is refunded within specified time periods.

- Requires the Secretary of State to adopt rules that determine what constitutes a contract for the purchase of goods or services for the purpose of the public contractor contribution limits, and specifies that nothing in these rulemaking requirements exempts the holder of a public office from the contribution limits prior to the adoption of those rules.

- Permits the certification that a contractor is in compliance with the public contractor contribution limits to be made by the contractor on an annual basis or to be included in the contract.

- Includes a federal political committee that is registered with the Secretary of State in the list of political action committees that may be affiliated with a public contractor for the purpose of the public contractor contribution limits.

- Specifies that a political action committee is affiliated with a public contractor if more than 50% of the political action committee's contributions are received from any combination of the persons responsible for the contracting entity.

- Changes from two calendar years to 24 months the period prior to the award of a public contract in which a proposed contractor must not have made contributions in excess of specified limits in order for that contractor to be eligible to be awarded the contract.

- Specifies that the provisions of the Campaign Finance Law that restrict public contracting based on political contributions that were enacted in Am. Sub. H.B. 694 of the 126th General Assembly apply only to contributions made on or after April 4, 2007, and repeals provisions of that act specifying that only certain contributions made on or after April 4, 2007, were exempt from its provisions.

- Specifies that the previously described provisions are intended to clarify the General Assembly's original intent in enacting Am. Sub. H.B. 694 of the 126th General Assembly, are remedial in nature, and apply to contracts awarded on or after the effective date of that act.

Board of elections participation in state purchase contracts

(R.C. 125.04)

Under continuing law, the Department of Administrative Services (DAS) is required to determine the supplies and services that are purchased by or for state agencies. DAS enters into purchase contracts for these supplies and services. Under continuing law, DAS may permit a political subdivision, private fire company, or private, nonprofit emergency medical service organization to participate in these supply and service contracts. A political subdivision or other participating entity may be charged a reasonable fee by DAS to cover administrative costs incurred by the Department as a result of the entity participating in the purchase contract. Under prior law, however, boards of elections were excluded from participating in these contracts.

The act eliminates the provision excluding boards of elections from participating in state purchase contracts. Under the act, DAS may permit a board of elections to participate in these contracts in the same manner as a private fire company may participate. A board of elections desiring to participate in purchase contracts must file with DAS a written request for inclusion in the program. The request must include an agreement to be bound by the terms and conditions prescribed by DAS and an agreement to make direct payments to the vendor under each purchase contract. Purchases made through such a purchase contract are exempt from competitive selection requirements that would otherwise apply.

A board of elections is permitted to purchase supplies or services from another party, including a political subdivision, instead of through DAS purchase contracts, if the board is able to purchase those supplies or services from the other party upon equivalent terms, conditions, and specifications but at a lower price than it can through the contracts. Such a purchase also is exempt from competitive selection requirements. A board of elections that makes a purchase from another party at a lower price is required to maintain sufficient information regarding the purchase to verify that the board satisfied the requirements for making that purchase.

DAS must include in its annual report an estimate of the cost it incurs by permitting boards of elections, as well as other eligible entities, to participate in purchase contracts. DAS may require participating boards of elections to file a report, as often as DAS finds necessary, stating the number of contracts the board participated in within a specified period of time and any other information DAS requires.

Apportionment of election expenses

(R.C. 3501.17)

Continuing law requires certain election-related expenses to be paid in the same manner as other county expenses are paid. Some of the expenses that must be paid in this manner include the compensation of board of elections members and employees; expenditures for the rental, furnishing, and equipping of the board's office; and the costs of pollbooks, tally sheets, maps, flags, ballot boxes, and all other permanent election records and equipment.

Other election expenses must be charged to the subdivisions in and for which the elections are held. The expenses that must be charged to the subdivision conducting the election include the compensation of judges and clerks of elections; the cost of renting, moving, heating, and lighting polling places and of placing and removing ballot boxes and other equipment; the cost of printing and delivering ballots, cards of instructions, and other election supplies; and all other expenses of conducting primaries and elections in odd-numbered years. The act expands the list of election expenses that must be charged to the subdivision conducting the election. The act specifies that the cost of equipment includes the cost of voting machines, marking devices, and automatic tabulating equipment and that the cost of other election supplies includes the supplies required to print voter verified paper audit trails for electronic voting machines. The cost of pollbooks also is charged to the subdivisions under the act. Also, under the act, all of the following expenses also must be charged to the subdivision conducting the election:

- The compensation of intermittent employees in the board's offices;

- The cost of precinct registration lists;

- The cost of contractors engaged by the board to prepare, program, test, and operate voting machines, marking devices, and automatic tabulating equipment.

Prior law did not specify what types of "subdivisions" may be charged for the costs of conducting an election. The act defines a "subdivision" for this purpose as a board of county commissioners, board of township trustees, legislative authority of a municipal corporation, board of education, or any other board, commission, district, or authority that is empowered to levy taxes or permitted to receive the proceeds of a tax levy, regardless of whether the entity receives tax settlement moneys.

County election funding

(R.C. 3501.17)

At the request of a majority of the members of the board of elections, the act permits a board of county commissioners to establish, by resolution, an elections revenue fund. The purpose of the fund is to accumulate revenue withheld by or paid to the county for the payment of any expense related to the duties of the board of elections, upon approval of a majority of the members of the board of elections. The fund must not accumulate any revenue withheld by or paid to the county for the compensation of the members of the board of elections or of the director, deputy director, or other regular employees in the board's offices, other than compensation for overtime worked.

The board of county commissioners is permitted, by resolution, to transfer money to the elections revenue fund from any other fund of the political subdivision from which such payments lawfully may be made. Following an affirmative vote of a majority of the members of the board of elections, the board of county commissioners is permitted, by resolution, to rescind an established elections revenue fund. If an elections revenue fund is rescinded, money that has accumulated in the fund must be transferred to the county general fund.

Publication of notice for statewide ballot issues

(R.C. 3501.05, 3501.11, 3501.17, 3505.062 and 3505.063)

The Ohio Constitution requires the ballot language, explanations of the ballot language, and arguments for and against the ballot language to be published

once a week for three consecutive weeks prior to an election at which a law or constitutional amendment proposed by initiative petition, a referendum, or a constitutional amendment proposed by the General Assembly will appear on the statewide ballot. Additionally, the General Assembly is required to provide by law for dissemination of information in order to inform the electors regarding constitutional amendments proposed by the General Assembly. (Ohio Constitution Article I, Section 1g, and Article XVI, Section 1.)

Under prior law, boards of elections generally were required to provide for the issuance of all notices, advertisements, and publications concerning elections. However, the state of Ohio bore the cost of advertising statewide ballot issues, explanations, and arguments. To the extent the General Assembly appropriated money for that purpose, the Ohio Ballot Board directed the Secretary of State (the Chair of the Ohio Ballot Board) to reimburse the boards of elections for public notice costs associated with statewide ballot issues. In addition to newspaper publication, prior law required additional notification for constitutional amendments. With regard to proposed constitutional amendments, continuing law requires the Secretary of State to disseminate information, which may include all or part of the official explanation and arguments, by means of direct mail or other written publication, broadcast, or other means or combination of means as directed by the Ohio Ballot Board, in order to inform the voters as fully as possible concerning those amendments.

The act eliminates the requirement that boards of elections provide for the publication of notice for statewide ballot issues and instead requires the Ohio Ballot Board to direct the Secretary of State to contract for the publication in a newspaper of general circulation in each county of the ballot language, explanations, and arguments regarding each of the following:

- A constitutional amendment or law proposed by initiative petition;
- A law, section, or item of law submitted to the electors by referendum petition for their approval or rejection;
- A constitutional amendment submitted to the electors by the General Assembly.

Additionally, the Secretary of State must disseminate the additional information, by broadcast or other means, for more than just constitutional amendments. Under the act, the Secretary of State is required to disseminate information to inform the voters as fully as possible regarding each proposed constitutional amendment, proposed law, and referendum, as directed by the Ohio Ballot Board. The Ohio Ballot Board must reimburse the Secretary of State for all expenses the Secretary of State incurs for advertising statewide ballot issues.

Electronic transmission of voter registration data

(R.C. 3501.05 and 3503.09)

The act requires the Secretary of State to adopt rules for the electronic transmission of name and residence changes for voter registration records in the Statewide Voter Registration Database by boards of elections, designated agencies, and other entities that conduct voter registration activities. The Secretary of State also must adopt rules for the purpose of improving the speed of processing new voter registrations that permit information from a voter registration application received by a designated agency or an office of deputy registrar of motor vehicles to be made available electronically, in addition to requiring the original voter registration application to be transmitted to the applicable board of elections. These rules also must:

- Prohibit any direct electronic connection between the Statewide Voter Registration Database and a designated agency, office of deputy registrar of motor vehicles, or other entity that conducts voter registration activities;

- Require any updated voter registration information to be verified by the Secretary of State or a board of elections before the information is added to the Statewide Voter Registration Database for the purpose of modifying an existing voter registration;

- Require each designated agency or office of deputy registrar of motor vehicles that transmits voter registration information electronically to transmit an identifier for data relating to each new voter registration that must be used by the Secretary of State or a board of elections to match the electronic data to the original voter registration application.

Absent voter's ballots for parents of hospitalized minor children

(R.C. 3509.08)

Under continuing law, any qualified elector who is unable to travel to the voting booth in the elector's precinct on the day of any general, special, or primary election due to the fact that the elector is confined in a hospital as a result of an accident or unforeseeable medical emergency occurring before the election may apply to vote by absent voter's ballot. This application must be made to the director of the board of elections of the county where the elector is a qualified to vote in the election not later than 3 p.m. on the day of the election.

The act allows parents of minor children who are hospitalized as a result of an accident or unforeseeable medical emergency occurring before the election to apply to vote by absent voter's ballot in a similar fashion.

Election law investigations

(R.C. 3501.11)

Continuing law requires a board of elections to investigate irregularities, nonperformance of duties, or violations of the Election Law by election officers and other persons and administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with such an investigation. Prior law required the board to report the facts of that investigation to the prosecuting attorney. Under the act, the board may report the facts of such an investigation either to the prosecuting attorney or to the Secretary of State.

Election law subpoenas

(R.C. 3599.37)

Continuing law prohibits a person who is subpoenaed or ordered to appear before a grand jury, court, board, or officer in a proceeding or prosecution under the Election Law from doing either of the following:

- Failing to appear or, having appeared, refusing to answer a question pertinent to the matter under inquiry or investigation;

- Refusing to produce, upon reasonable notice, any material, books, papers, documents, or records in that person's possession or under that person's control.

Under prior law, a person who violated either of these provisions was guilty of a misdemeanor of the first degree, unless the violator claimed the violator's constitutional rights. The act specifies the process by which a violator must claim the protection of the violator's constitutional rights, in order to avoid prosecution for refusing to answer a subpoena issued under the Election Law. Under the act, the violator must personally appear before the grand jury, court, board, or officer and assert the protection of the violator's constitutional rights, in order to avoid being found guilty of a first degree misdemeanor for failing to respond to an Election Law subpoena.

Maintenance of specified electronic election information

(R.C. 3501.05)

Continuing law requires the Secretary of State to establish a computerized statewide database of all legally registered voters that complies with the requirements of federal law. The act requires the Secretary of State to both establish and maintain that database.

Similarly, the Secretary of State is required, under continuing law, to publish, on a web site of the Secretary of State, all directives and advisories issued to the boards of elections. The Secretary of State must provide access to all directives and advisories currently in effect and to an archive of all previously published directives and advisories. The act requires the Secretary of State to maintain the archive of previously published directives and advisories.

Miscellaneous changes

(R.C. 3501.01, 3501.05, 3501.11, 3501.17, 3501.31, 3505.23, 3513.21, 3599.17, and 3599.19)

Continuing law requires the Secretary of State to conduct voter education outlining voter identification requirements. In addition to existing voter education, the act requires the Secretary of State to conduct voter education outlining absent voter's ballot, provisional ballot, and other voting requirements.

The act makes various grammatical changes to the law specifying the election duties of the Secretary of State and the boards of elections. These changes generally do not substantively affect those election duties.

The act also eliminates references to "clerks" of elections.

Delivery of certain campaign finance statements

(R.C. 3517.106 and 3517.11)

Campaign committees of candidates for the office of member of the General Assembly and candidates for the office of judge of a court of appeals generally are required to file their campaign finance statements by electronic means of transmission to the Office of the Secretary of State. If the total amount of contributions received by the campaign committee for the applicable reporting period is $10,000 or less, the campaign committee is permitted, but not required, to file those statements by electronic means of transmission. If a campaign committee that is not required to file electronically chooses to file its campaign

finance statements by printed version only, those statements must be filed with the appropriate board of elections.

If a campaign finance statement is filed by printed version only, the campaign committee filing the statement must file two copies of that statement. Under prior law, the board of elections receiving the filing must send one of those copies to the Secretary of State *by overnight delivery service* before the close of business on the day the board receives the statement. The act changes the method by which a board of elections is required to transmit to the Secretary of State a copy of a paper campaign finance filing. Under the act, the paper copy must be sent by *certified mail*, instead of by overnight delivery service, before the close of business on the day the board receives the statement.

Public contractor campaign finance restrictions

(R.C. 3517.093, 3517.13, and 3517.992; Section 735.10)

Solicitations of contributions from state contractors

Continuing law prohibits certain public officials from soliciting or directing contributions from persons responsible for, or related to, an entity that has been awarded a state contract for the purchase of goods or services in excess of $500 to a candidate or candidate's campaign committee, a political party, a ballot issue committee or political action committee that primarily supports or opposes a ballot issue or question, a legislative campaign fund, or a person who makes electioneering communications. The act revises the definition of "state contract" so that the holder of the public office with ultimate responsibility for the award of the contract is only prohibited from soliciting or directing contributions made by the recipients of contracts awarded by that officeholder.

The act also requires the Secretary of State to adopt rules to determine what constitutes a contract for the purchase of goods and what constitutes a contract for the purchase of services for the purpose of the public contractor solicitation restrictions. However, nothing in the rulemaking requirement exempts the holder of a public office from complying with the solicitation ban prior to the adoption of those rules by the Secretary of State.

Contracts subject to the restrictions

Prior law prohibited an agency or department of the state or any political subdivision from awarding a contract for the purchase of goods or services costing more than $500 to any individual, partnership, association, estate, trust, corporation, or business trust if any of the persons responsible for the contracting entity has made, within the previous two calendar years, one or more contributions

in excess of $1,000 to the holder of the public office having ultimate authority for the award of the contract.[249] State agencies, departments, and political subdivisions also were restricted from awarding such a contract if a combination of the persons responsible for the contracting entity, certain related persons, a political action committee (PAC) affiliated with the entity, or a combination of responsible persons and affiliated PACs has made a contribution to the holder of the public office having ultimate authority for the award of the contract during that time that exceeds $2,000. Once a contract is awarded, contributions by the persons responsible for the contracting entity and any affiliated PAC are similarly limited until one year following the conclusion of the contract.

The act generally retains these provisions, but increases, for political subdivisions only, the value of a contract that may be awarded without subjecting the persons responsible for the contracting entity to the public contractor contribution limits. Under the act, the public contractor contribution limits apply only to contracts awarded by a political subdivision for goods or services with a value of $10,000 or more.

The act also requires the Secretary of State to adopt rules that determine what constitutes a contract for the purchase of goods and what constitutes a contract for the purchase of services for the purpose of the public contractor campaign finance restrictions. However, nothing in the rulemaking requirement exempts a state agency or department or a political subdivision from complying with the restrictions prior to the adoption of those rules by the Secretary of State.

Penalties for violations

Under continuing law, violations of the public contractor campaign finance restrictions are punishable by a fine and, depending upon the circumstances, the rescission of the contract. The act does not change the penalties, but it specifies circumstances under which the penalties cannot be imposed for a violation. A fine cannot be imposed and a contract cannot be rescinded for a violation of the public contractor contribution limits if a contribution that violates the limits is made after the contract is awarded and if either of the following applies:

- The excess contribution is completely refunded within five business days.

[249] Persons whose contributions are limited under this provision include: individuals, any partner or owner of a partnership or other unincorporated business, any shareholder of an association, any administrator or executor of an estate, any trustee of a trust, any owner of more than 20% of a corporation or business trust, and any spouse or child aged 7 to 17 years of any person previously identified.

- The excess contribution is completely refunded within ten business days after the recipient knows of the contribution or is notified of the contribution by the Secretary of State or a board of elections, whichever occurs earlier.

Certification of compliance

Prior law prohibited a state agency or department or a political subdivision from entering into a contract that would subject the agency, department, or political subdivision to the public contractor campaign restrictions to include in that contract a certification that the persons responsible for the entity being awarded the contract are in compliance with the public contractor contribution limits. The act generally retains this prohibition but permits the certification to be either included in the contract or received for the applicable calendar year. Thus, under the act, an individual contract with a contracting entity is not required to include a certification if the entity has certified to the applicable agency, department, or political subdivision for that calendar year that the persons responsible for that entity are in compliance with the public contractor contribution restrictions.

Affiliated political action committees

As previously mentioned, the public contractor contribution limits apply not only to persons responsible for a contracting entity but also to PACs affiliated with the contracting entity. Under prior law, a PAC was affiliated with a contracting entity if the PAC received more than 50% of its contributions from any of the persons responsible for the contracting entity. The act revises this calculation by specifying that a PAC is affiliated if it received, as reported on its most recent campaign finance statement, more than 50% of its contributions from any *combination* of the persons responsible for the contracting entity. Additionally, under the act, a federal political committee that is registered with the Secretary of State is affiliated with a contracting entity if it received more than 50% of its contributions from any combination of the persons responsible for the contracting entity, as reported in filings made with the Federal Election Commission.

Time period within which contribution limits apply

Prior law restricted contracts from being awarded to an entity if the persons responsible for the entity made contracts in excess of specified limits during the two calendar years prior to the award of the contract. The act changes this time period from two calendar years to 24 months. Thus, under the act, a state agency or department or a political subdivision is prohibited from awarding a contract to a specified entity if the persons responsible for that entity made

contributions in excess of the applicable $1,000, $2,000, or $10,000 limit during the 24 months prior to the award of the contract.

Public contractor campaign contributions made before April 4, 2007

(Sections 631.04, 631.05, and 631.06)

Am. Sub. H.B. 694 of the 126th General Assembly (H.B. 694) expanded various restrictions on awarding public contracts to a person or entity, if the person or if persons responsible for the entity made certain campaign contributions to the holder of the public office with ultimate responsibility for the award of the contract during the previous two years. H.B. 694 also restricted the contributions that may be made by such a person during the term of the contract and for a period of one year following the conclusion of the contract.

H.B. 694 included a provision specifying that some, although not all, of its new provisions restricting the award of public contracts based on prior contributions apply only to contributions made on or after January 1, 2007. This act repeals that provision and instead specifies that all of the provisions of the Campaign Finance Law that restrict public contracting based on prior political contributions that were enacted in H.B. 694 apply only to contributions made on or after April 4, 2007. The act also specifies that the previously described changes are intended to clarify the General Assembly's original intent in enacting that act, are remedial in nature, and apply to contracts awarded on or after H.B. 694's effective date (April 4, 2007).

DEPARTMENT OF TAXATION (TAX)

- Eliminates the Local Government Revenue Assistance Fund (LGRAF), effective January 1, 2008.
- Requires that tax revenues previously credited to the Local Government Fund (LGF), LGRAF, and Library and Local Government Support Fund (LLGSF) instead be credited to the General Revenue Fund.
- Requires the Director of Budget and Management to transfer 3.68% of GRF tax revenue to the LGF and 2.22% of GRF tax revenue to the LLGSF for distribution to local governments.
- Requires LLGSF moneys to be distributed to local governments in accordance with the formula prescribed under continuing law.

- Distributes LGF money among counties, and among municipalities levying an income tax, on the basis of each county's or municipality's 2007 LGF and LGRAF distributions, up to the total 2007 LGF and LGRAF distributions for all counties and municipalities.

- Distributes any additional moneys available in the LGF among counties on the basis of their respective populations.

- Requires LGF moneys to be distributed to county local government funds and disbursed therefrom to local governments in each county in accordance with the continuing alternative or statutory formulas.

- Requires that, in the final six months of calendar year 2007, the LGF, LGRAF, and the LLGSF be credited amounts equal to the amount each fund was credited in the same month in 2006.

- Requires that monthly distributions from those funds to the respective county funds and to municipalities for each month in the second half of 2007 be based upon each county's or municipality's share of the total amount of distribution received in the same month in 2006.

- Expands eligibility for the job retention tax credit by allowing third parties' payments to count toward the taxpayer's required investment so long as the third parties' payments are "a result of" leasing the project site and the site has more than one of four specified uses.

- Requires pass-through entities desiring pass-through treatment of job creation and job retention tax credits to specifically elect that treatment.

- Requires construction activities to be included in the cost and benefit analysis that must be conducted in connection with existing law's tax credit for rehabilitating historic buildings.

- Authorizes a county with a population of between 65,000 and 70,000 to increase lodging taxes by up to 1% to pay the expenses of a convention and visitors' bureau in promoting travel and tourism if the county last increased its tax rate to the maximum 3% in November 1984 and was still levying that maximum rate on December 31, 2006.

- Provides that the resolution the board of county commissioners adopts to levy the lodging tax increase is subject to referendum.

- Clarifies that a lodging tax for certain arena or convention center projects and other purposes is subject to referendum if the board decides not to submit the resolution to prior voter approval.

- Authorizes counties with a population of less than 250,000 to extend lodging taxes for up to 15 years to continue to pay the costs of a municipal educational and cultural facility or a port authority educational and cultural performing arts facility.

- Changes the statutory criteria governing which counties may undertake, finance, operate, and maintain, and issue securities to pay the costs of, an arena or convention center supported by lodging taxes.

- Authorizes a charter county to levy an additional 1% lodging tax for up to ten years to pay for the construction and operation of a convention center.

- Increases the percentage of property tax collections credited to the county real estate assessment funds.

- Expands eligibility for the homestead exemption by making it available to elderly or disabled homeowners regardless of income.

- Increases the taxable value reduction but computes the tax bill reduction on the basis of effective tax rates rather than voted tax rates.

- Prevents new homestead exemption computation from reducing the tax reduction of current recipients.

- Reimburses taxing districts for the resulting property tax revenue loss.

- Requires the Tax Commissioner and Treasurer of State to adopt policies and procedures enabling payments to be deposited or credited within 30 days of initial receipt.

- Reduces the kilowatt-hour tax rate levied on the total price of electricity received by a self-assessing commercial or industrial electricity purchaser, from 4% to 3.5%, beginning with the meter reading period that includes July 1, 2008.

- Requires the Tax Commissioner to review that total price tax rate every biennium during budget deliberations and to consider electricity price

fluctuations over the most recent two fiscal years and other factors influencing Ohio's economy.

- Modifies the sales and use tax remittance and reporting requirements for persons required to remit taxes by electronic funds transfer.

- Extends the $1-per-ton tax credit for electric companies burning Ohio coal.

- Provides additional utility property tax replacement payments to any taxing district that has a nuclear power plant located within its territory if the taxing district experiences a reduction of more than 10% in the assessed value of electric company tangible personal property between 2005 and 2006.

- Authorizes retail vendors with annual Ohio delivery sales of less than $500,000 to continue using origin-based sourcing rules for determining the appropriate sales tax jurisdiction in which a sale is taxable.

- Authorizes all retail vendors currently using origin-based sourcing to continue to do so if the Tax Commissioner determines that the Streamlined Sales and Use Tax Agreement does not allow origin-based sourcing by retail vendors with annual Ohio delivery sales of less than $500,000.

- Authorizes out-of-state sellers with annual Ohio delivery sales of less than $500,000 to collect Ohio use taxes at a single uniform rate if the Commissioner makes that determination.

- Provides for the distribution of use tax collected at a single uniform rate to counties and transit authorities.

- Denies the sales tax vendor discount to a vendor using a certified service provider that receives a monetary allowance for performing the vendor's sales and use tax functions in Ohio.

- Narrows the nonresident vehicle sales tax exemption to those sales where the nonresident's state provides a similar exemption to Ohio residents.

- Exempts from the sales tax the sale of a motor vehicle to a nonresident if the nonresident's state does not provide a credit for sales or use tax paid

to Ohio or if it does not impose a sales, use, or similar excise tax on the ownership or use of motor vehicles.

- For taxable motor vehicles sales to nonresidents, the tax due equals the lesser of the amount that would be collected under Ohio law if the total rate were 6% or the tax that would be due to the nonresident's state if the sale occurred there (certain portions VETOED).

- Distributes the revenue arising from ½% of the applicable tax rate on those sales to the county where the sale occurs.

- Raises the fee collected by the state for administration of taxes on public utility personal property and tangible personal property.

- Removes the six-day limit on sales-tax-exempt sales made by school- or student-related organizations.

- Modifies the definition of "authorized recipient of tobacco products" for purposes of the prohibition against shipping cigarettes to any person other than an "authorized recipient of tobacco products."

- Repeals the $300-per-year exemption from the cigarette excise tax and the use tax for cigarettes brought into Ohio for purposes other than resale.

- Reduces the penalty for possession of unstamped cigarette packs if the number of cigarettes is 1,200 or fewer.

- Clarifies that "other tobacco product" has the same meaning as "tobacco product" under the tobacco tax law.

- Authorizes public disclosure of the list of cigarette manufacturers and importers, licensed cigarette wholesalers, and registered manufacturers, importers, and brokers of other tobacco products.

- In 2008 and 2009, authorizes nonrefundable corporation franchise tax and income tax credits for retail service station dealers that sell and dispense E85 blend fuel and blended biodiesel through metered pumps, at the rate of 15¢ per gallon in 2008 and 13¢ per gallon in 2009.

- Permits taxpayers to claim an income tax deduction of up to $10,000 for expenses incurred in making an organ donation while alive.

- Authorizes school boards to levy a dual-purpose income tax.
- Authorizes school boards to reduce income taxes without voter approval.
- Dedicates 70% of post-FY 2018 CAT revenue to school funding.
- Requires the Department of Education to consult with the Office of Budget and Management in determining the state education aid offset against business property tax replacement payments, and for both to agree on the determination.
- Accelerates the deadline for determining the state education aid offset by 16 days.
- Expressly requires that if, after direct replacement payments to school districts are made, there is not enough CAT revenue left to also compensate the GRF for state education aid offsets, the shortfall must be made up by later transfers to the GRF.
- Extends from 2008 to 2009 the time during which a new school district created between 2000 and 2004 will receive 100% of its utility property tax replacement payments for current fixed-rate levy losses.
- Requires excess public utility property tax replacement funds not needed to make tax replacement payments and not needed to assist school districts with maintenance of School Facility Commission-subsidized building projects to be transferred to the General Revenue Fund.
- Ensures that a county's share of excess KWH and MCF excise tax revenue not needed to make utility property tax replacement payments to local governments (and therefore required to be apportioned among them) are allocated among the various county levies and levy purposes instead of entirely to the county general fund.
- Provides that any local taxing unit's share of such excess payments must be retained in the county undivided income tax fund if the amount to be distributed is less than $5, and must be added to the next distribution amount.
- Prevents compensation for public utility property tax-related administrative fees from exceeding the compensation paid in 2006.

- Corrects a reference to the term "consumer" by changing it to "customer" in the law regarding municipal income tax on electric companies.

- Requires the Tax Commissioner to notify a municipal corporation if the reapportionment of an electric or telephone company's income affects the tax owed to the municipal corporation by more than $500.

- Requires the state to reimburse municipal corporations for the 1.5% fee charged for administration of the municipal tax on electric and telephone companies if a refund is owed to the taxpayer.

- Exempts from municipal income taxes the compensation of persons employed within the boundaries of United States Air Force bases unless the person resides in the municipal corporation.

- Expressly authorizes municipal corporations to permit their tax administrators to publish income tax-related statistics in a manner that does not disclose information about particular taxpayers.

- Prohibits municipal corporations from requiring persons paying sickness or accident disability payments to withhold municipal income taxes from such payments.

- Specifies the assessment rate of tangible personal property leased to a telecommunications company, other than in a sale and leaseback transaction, during the phase-out of the taxation of that property.

- Clarifies that the tangible personal property of telecommunications companies is to be valued in the same manner as other public utility property.

- Specifies that the $10,000 exemption for personal property does not apply to personal property valued under the public utility property valuation law.

- Continues temporary law requiring telecommunications property to be listed and assessed in the same manner as business tangible personal property but to continue to be apportioned among taxing units.

- Authorizes the Office of Information Technology to acquire for the Department of Taxation the State Taxation Accounting and Revenue

System (STARS), an integrated tax collection and audit system that will administer all of the state's taxes.

- Temporarily authorizes a county with a population that exceeds 1.2 million to use up to $3 million in its delinquent tax and assessment collection fund for foreclosure prevention and abating nuisances in the form of deteriorated residential buildings in foreclosure.

- Authorizes a board of township trustees of a limited home rule township to adopt a resolution declaring prior resolutions relating to tax increment financing to have had an immediate effective date.

- Converts the temporary 0.90% discount for retail fuel dealers into a discount for the motor fuel dealers that are liable for the fuel excise tax.

Local Government Funds

(R.C. 131.51, 5727.45, 5727.84, 5733.12, 5739.21, 5741.03, 5747.03, 5747.47, 5747.50, 5747.501, and 5747.51; Sections 757.03, 757.04, and 815.09)

Overview

The act eliminates the Local Government Revenue Assistance Fund (LGRAF) and changes the amount of state tax revenue credited to the Local Government Fund (LGF) and Library and Local Government Support Fund (LLGSF), and thus the amount of revenue available for distribution to counties, municipalities, townships, public library systems, and other special-purpose political subdivisions receiving revenue sharing payments.

Under codified law provisions that have been suspended since the beginning of fiscal year 2002 (July 1, 2001), each of the funds was credited with a percentage of the state's major tax revenue sources: 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 receive 4.2% of revenue from those taxes (except the kWh tax) and the LGRAF would receive 0.6%; the LLGSF would receive 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.

Prior codified law distributed LGF money 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 was 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.

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 received 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). The sum of the formula amount and the five mill portion was then apportioned among the county and the townships, municipal corporations, and some special-purpose districts in the county. In almost all counties, the apportionment was based on a formula negotiated under the supervision of the county budget commission. In a few counties, the apportionment followed 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 was 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.

Freeze on distributions continued through 2007

For the last six months of 2007 (first six months of fiscal year 2008), the act freezes at 2006 levels the distributions from the LGF, LGRAF, and LLGSF to each county's undivided local government fund, undivided local government revenue assistance fund, and undivided local library government support fund. To that end, the act provides for distributions to be made from the LGF, LGRAF, and LLGSF each 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 of August 2006 to December 2006.

? Each municipality receiving direct distributions from the LGF will receive the same percentage of the total LGF distribution that it received for each respective month of August 2006 to December 2006.

? 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 of August 2006 to December 2006.

The act does not expressly provide for distributions to the various local governments of the amounts in the county undivided funds for the second half of calendar year 2007. Therefore, it appears that permanent codified law governing that distribution would continue to apply.

LLGSF

For the second half of calendar year 2007, monthly deposits to the LLGSF are equal to the previously frozen amounts for the corresponding month in the second half of calendar year 2006. In each month from August 2007 to December 2007, each county undivided fund will receive the same percentage of the LLGSF as it received in the respective month of August 2006 through December 2006. The act requires that each county's total LLGSF distribution for 2007 be used to compute each county's 2008 guaranteed distribution.

Monthly distributions from the GRF to the LCF and LLGSF after 2007

Under the act, all tax revenues previously credited to the LGF, LGRAF, and LLGSF will instead be credited to the GRF. Beginning in January 2008, the Director of Budget and Management is required to make monthly distributions from the GRF to the LGF and LLGSF for distribution to local governments. Each month, the Director must credit 3.68% of the preceding month's total GRF tax revenues to the LGF and 2.22% of those total GRF revenues to the LLGSF. The act requires that the Director develop a schedule that identifies the specific tax revenue sources that will be used to make the transfers. The Director may revise that schedule from time to time as the Commissioner considers necessary.

Monthly distributions from the LGF after 2007

Each month beginning in 2008, the Tax Commissioner is required to distribute moneys credited to the LGF to counties for further distribution to local governments located within their respective boundaries. The amount of distribution to each county is based on the amount distributed to the county in 2007. The amount distributed to a county during any given month will be equal to the county's proportionate share of the total calendar year 2007 LGF distributions to all counties multiplied by the total amount of LGF available for distribution in the current month.

To the extent there is money left over in the LGF after counties have received those proportionate shares and municipal corporations have been paid their respective shares as described below, the balance in the LGF is distributed to counties on a per capita basis.

Counties would disburse their LGF distributions to local governments located within their territorial boundaries in accordance with existing procedures.

Each month, the Tax Commissioner must distribute a portion of the LGF to municipalities that received direct distributions from the LGF in calendar year 2007. The portion of the LGF distributed to those municipalities will equal the percentage of total LGF and LGRAF moneys distributed directly to municipalities during calendar year 2007. Each municipality will receive a percentage of the LGF municipal earmark that is equal to their portion of the total 2007 LGF and LGRAF distributions. The total amount distributed to municipalities from the LGF during any calendar year must not exceed the total amount of the LGF distributed to municipalities during calendar year 2007. If that maximum amount is reached during any month of the calendar year, the municipalities will receive their full LGF distribution for that month, but will not receive any further LGF distributions during the calendar year.

If the Tax Commissioner is informed that a municipality receiving LGF distributions has dissolved, the Tax Commissioner must cease providing payments to that municipality. The LGF distribution that was previously provided to the dissolved municipality is divided among the remaining municipalities that receive distributions on a pro rata basis.

Monthly distributions from the LLGSF after 2007

Each month, after the Director makes the monthly distribution from the GRF to the LLGSF, the Tax Commissioner is required to distribute money credited to the LLGSF to counties. Over the course of a year, counties will be distributed the same percentage of the LLGSF as they received from the LLGSF under the permanent law provisions that were suspended in 2002 (see above).

Estimated LGF payments certified to county auditors

Every year, on or before July 25, the Tax Commissioner is required to certify to each county auditor the amount expected to be distributed to each county from the LGF during the following calendar year under the distribution formula described above. The estimate is based on each county's 2007 distributions and what is expected to be available in the LGF during the following year.

The estimate for each county will be made by adding the separate products computed under (1) and (2), below:

(1) The product obtained by multiplying the following:

- Each county's proportionate share of the total amount distributed to counties from the LGF and the LGRAF during calendar year 2007; and

- The total amount distributed to counties from the LGF and LGRAF during calendar year 2007 adjusted downward to the extent that total LGF distributions to counties for the following year are expected to be less than was distributed to counties from the LGF and LGRAF in 2007.

(2) The product obtained by multiplying:

- Each county's proportionate share of the state's population; and

- The amount by which total estimated distributions from the LGF during the following year, less the total estimated amount to be distributed from the fund to municipalities during the following

year, exceed the total amount distributed to counties from the LGF and LGRAF in 2007.

Job retention tax credit

(R.C. 122.171(A) and (B))

Under continuing law, businesses with Ohio operations that have entered into an agreement with Ohio's Tax Credit Authority are entitled to claim a credit for up to 15 years against the corporation franchise tax, personal income tax, or commercial activity tax for fostering job retention. To be eligible for the credit, a business must employ at least 1,000 full-time employees at a project site before applying for the tax credit; must make payments for a capital investment project at that site of at least $100 million or $200 million, depending on the salary level paid to employees; must be a manufacturer at the project site or be providing corporate administrative functions; and must obtain the Authority's review and approval of the capital investment project.

The act provides that a business also may be eligible for the job retention tax credit even if an "unrelated third party entity" makes the capital investment project payments "as a result of" a long-term lease of at least 20 years. Also, the project must include headquarters operations that are part of a mixed-use development that includes at least two of the following: office, hotel, research and development, or retail facilities.

If a project site is leased, the term of a job retention tax credit cannot exceed the lesser of 15 years or one-half of the lease term, including any permitted renewal periods.

Job creation, retention tax credit pass-through

(R.C. 122.17(J) and 122.171(I))

Continuing law authorizes tax credits for businesses that formally agree to increase employment in Ohio or retain employment levels in Ohio. The credits may be claimed against the commercial activity tax (CAT), the corporation franchise tax, the insurance company gross premiums taxes, or the income tax. (In the case of the income tax, the credit is available to owners of pass-through entities--e.g., partnerships, S corporations, most limited liability companies--that increase or retain employment levels.) When a credit is granted to a pass-through entity, continuing law requires the credits to be passed through and apportioned among the entity's owners in the same proportions that the entity's net income is apportioned.

The act requires pass-through entities desiring pass-through treatment of the credit to entity owners to elect that treatment. The election must be made on a report that credit recipients are required to submit to the Department of Development each year. The election is irrevocable for the credit covered by that report. The provision recognizes that under the CAT, the entity itself, and not its constituent owners, is subject to the tax, and therefore the credit could be applied by the entity against its own CAT liability instead of against the owners' individual income tax liabilities.

The provision takes immediate effect.

Cost-benefit analysis for historic rehabilitation tax credit

(R.C. 149.311(D))

Continuing law authorizes a refundable credit against the dealers in intangibles tax, income tax, and corporation franchise tax for expenditures incurred in rehabilitating historic buildings. One of the criteria that must be met to qualify for the tax credit is that rehabilitation must result in a net revenue gain in state and local taxes once the building is used. The Director of Development, in conjunction with the Tax Commissioner, must conduct a cost-benefit analysis to determine if this criterion is met.

The act requires that, when conducting the analysis, the Director and Commissioner include activities during the construction phase of rehabilitating the building in their determination of whether the rehabilitation results in such a gain or loss.

Lodging tax increase for county convention and visitors' bureau

(R.C. 305.31 and 5739.09(A)(7))

Continuing law authorizes a board of county commissioners to levy an excise tax on lodging at hotels in the county for a variety of purposes, including to make contributions to a convention and visitors' bureau in the county. (Legislative authorities of municipal corporations and boards of trustees of townships also may levy this tax.) The county lodging tax rate levied for a bureau cannot exceed 3%. A uniform percentage of the tax collected in a municipal corporation or township, but not to exceed 33-1/3%, must be paid to the municipal corporation or township if the municipal corporation or township does not levy its own tax. The remainder must be used to make contributions to the bureau and may be pledged to repay debt issued to construct a convention center pursuant to an agreement between the county and the bureau.

The act permits a certain class of counties to increase the rate of the lodging taxes by up to 1%. The authority applies only to a county that was levying a lodging tax for a convention and visitors' bureau on December 31, 2006, at the maximum 3% rate, in which the most recent tax rate increase was enacted or took effect in November 1984, and in which the population is between 65,000 and 70,000 according to the most recent federal decennial census. (Marion County, with a 2000 census population of 66,217, appears to be the only county currently satisfying the population criterion.)

The lodging tax increase must be used for the purpose of paying the expenses deemed necessary by the convention and visitors' bureau operating in the county to promote travel and tourism. The increase may continue for up to 20 years, but may not continue beyond the time when the purpose of the increase ceases to exist. None of the revenue from the rate increase needs to be returned to townships or municipal corporations that do not levy their own lodging taxes.

The lodging tax increase is subject to referendum under existing law's referendum procedures (R.C. 305.31 to 305.41), which permit electors to file a referendum petition within 30 days after the increase is adopted and signed by 10% of the number of electors who voted in the county for the office of Governor in the most recent gubernatorial election.

Clarification regarding referendums on a lodging tax

(R.C. 305.31)

The act corrects an oversight in the referendum law (R.C. 305.31) by expressly providing that certain lodging taxes are subject to referendum if the question of the tax was not submitted directly to voters. Continuing law (R.C. 307.695(H)) already provides that such a tax is subject to referendum, but the referendum law does not include a reference to the law authorizing the tax. The act corrects this oversight. (Am. Sub. H.B. 699 of the 126th General Assembly authorized counties with populations of between 400,000 and 800,000 to undertake "projects"--i.e. building and operating an arena or a convention center, or a combination of both--and to promote the region.)

Extend county lodging taxes for municipal educational and cultural facilities and other purposes

(R.C. 307.672(B)(1) and 5739.09(E))

Continuing law authorized a county, not later than September 28, 1993, to levy a lodging tax to pay the costs of building a "municipal educational and cultural facility," and for any additional purposes determined by the county in the

resolution levying the tax or amendments to the resolution, including subsequent amendments to pay the costs of building a port authority "educational and cultural performing arts facility." A lodging tax levied for these purposes remains in effect for up to 15 years.

The act authorizes a county with a population of less than 250,000 according to the most recent federal decennial census to extend such a lodging tax for up to an additional 15 years. The extension must be made by resolution adopted by a majority of the legislative authority's members before the original lodging tax expires.

Issuing debt for an arena or a convention center supported by lodging taxes

(R.C. 307.695(A)(8), (G), and (I))

Am. Sub. H.B. 699 of the 126th General Assembly authorized the board of county commissioners of a county having a population of at least 400,000, but not more than 800,000, and that directly borders another state, to enact or increase the lodging tax to undertake, finance, operate, or maintain a "project." A project is an arena, a convention center, or a combination of both. Such a board also was authorized to issue securities to pay the costs of the project, to be secured by lodging tax revenues. Under H.B. 699, the resolution enacting or increasing the lodging tax must be adopted between January 15, 2007, and January 15, 2008.

The act changes the statutory criteria governing which counties may undertake, finance, operate, and maintain, and issue securities to pay the costs of, a project, by changing the population thresholds to apply to counties where the population is greater than 400,000 and wherein the population of the largest city comprises more than one-third of that county's population, so that only counties with a population exceeding 400,000 with a city that meets this description may undertake, finance, operate, and maintain a project, and issue securities to pay the costs of it.

Charter county lodging tax for convention center

(R.C. 5739.09(A)(6))

Under continuing law, any county may levy a lodging tax of up to 3% to raise general revenue. Some percentage of the revenue (up to 33-1/3%) must be shared with the municipal corporation or township where the lodging establishment is located if the municipal corporation or township does not levy its own lodging tax. Some counties also may levy additional lodging taxes for various specified purposes and under certain circumstances. Among these special

levies is a tax of up to 1.5% to finance a "municipal educational and cultural facility," which must have been adopted before July 1993.

The act authorizes a county that has adopted a charter form of government, and that already levies both a 3% general lodging tax and a 1.5% special tax for a municipal educational and cultural facility, to impose an additional 1% special lodging tax to finance the construction and operation of a convention center by a convention and visitors' bureau. The new tax may be levied for up to ten years. The county legislative authority must adopt the resolution levying the tax by January 1, 2008. None of the revenue from the extended tax has to be shared with a municipal corporation or township.

The provision applies only to Summit County because it is the only county that has adopted a charter form of government.

County real estate assessment funds

(R.C. 319.54(C))

Under continuing law, a portion of property taxes collected by a county treasurer are credited to the county's real estate assessment fund to defray the expenses of the county auditor's property and estate tax-related duties and of the county board of revision. The percentage credited to the fund declines as the amount of collections increase.

The act increases the percentage of property tax collections credited to the fund. An increase is provided for collections occurring after June 30, 2007, and before 2011. A further increase is provided for collections occurring in 2011 and thereafter. For the period between July 1, 2007, through December 31, 2010, the percentage is increased from 3.5% to 4% for the first $100,000 in collections; from 1-3/8% to 4% for collections between $100,000 and $500,000; from 1-3/8% to 2% for collections between $500,000 and $3.1 million; from 1% to 2% for collections between $3.1 million and $5.5 million; and from 0.75% to 1% for collections between $6.1 million and $10.5 million. There is no increase for collections between $5.5 million and $6.1 million or between $10.5 million and $150 million. The percentage decreases for collections over $150 million, from 0.6% to 0.585%.

Beginning in 2011, the percentage is 4% for the first $500,000 in collections; 2% for collections between $500,000 and $10.5 million; and 0.75% for all collections above $10.5 million.

Homestead exemption eligibility and computation changed

(R.C. 133.01, 323.151, 323.152, 323.153, 323.154, 4503.064, 4503.065, 4503.066, and 4503.067)

Prior law

Under prior law, the homestead exemption was available for residences (including manufactured and mobile homes) owned and occupied by persons who are elderly or disabled and who have limited incomes. To be eligible for the homestead exemption, household income (after certain adjustments) had to be $27,000 or less, and the owner or the owner's spouse had to be either (1) disabled, (2) at least 65 years of age, or (3) at least 60 years of age and the surviving spouse of a person who received the exemption at the time of death. The exemption was in the form of a reduction in the taxable value of the residence, which translates into a reduction in the tax bill. The extent of the reduction in taxable value depended on a person's income, with greater reductions afforded to those with relatively lower incomes, as follows:

Income	Reduction in Taxable Value
$0 to $13,800	$5,700 or 75% (lesser of the two)[250]
$13,801 to $20,300	$3,500 or 60% (lesser of the two)
$20,301 to $27,000	$1,130 or 25% (lesser of the two)

The Tax Commissioner indexed the foregoing income limits and taxable value reduction amounts annually to account for increases in general price inflation.

Under prior law, a person's actual homestead reduction was calculated by multiplying the reduction in taxable value by the voted tax rate in effect in the taxing district in which the home is located (i.e., by the tax rate before it is effectively reduced by application of the H.B. 920 tax reduction factor law, as described below).

[250] The lesser of the two is usually the dollar amount. In order for a residence to receive a 60% reduction in taxable value, for example, it would have to have a taxable value of $5,833 or less, which equates to an appraised market value of only $16,666.

Income limits repealed and reduction computation changed

The act removes the existing income eligibility criteria and makes the homestead exemption available to any homeowner who satisfies the age or disability criteria described above, regardless of income. The act also changes the manner in which the homestead tax reduction is computed. Under the act, a homeowner is entitled to a tax reduction each year equal to the net amount of taxes due on $25,000 in appraised market value of a homestead. The tax reduction is computed on the basis of the local effective tax rate. It reflects the net taxes actually charged after the existing 10% and 2.5% reductions are applied.

The act's $25,000 exemption amount is not indexed to general price inflation, as the prior exemption amounts were.

Manufactured homes

The act's eligibility expansion also applies to manufactured homes and mobile homes regardless of whether they are taxed as real property or are taxed under the alternative tax specifically for manufactured and mobile homes. (R.C. 4503.06.) For manufactured homes and mobile homes taxed as real property or first situsedin Ohio or sold after 1999, the act's tax reduction is computed in the same manner as for those taxed as real property.

The computation for all other manufactured homes and mobile homes corresponds with how the manufactured home tax is computed. The tax reduction equals the net amount of tax due on $25,000 of the home's cost, or its market value at the time the home was purchased, whichever is greater. As with real property, the tax reduction is computed on the basis of the local effective tax rate, but the reduction reflects the fact that these manufactured and mobile homes are assessed at 40% of the cost or market value at the time the home was purchased and are depreciated according to age. In effect, the tax reduction equals the amount of tax due on the taxable portion of the first $25,000 in value after discounting that value for the 40% assessment rate and the age-related depreciation schedule.

Reimbursement of taxing district and county auditors

(R.C. 319.54(B))

As with the prior homestead exemption, the act provides for semiannual payments to taxing units from the General Revenue Fund to reimburse them for the tax reduction. The reimbursement is provided for under continuing law that will incorporate the reimbursement without necessity of amendment. (See R.C. 323.156 and 4503.068.)

The act also reimburses county auditors for the increased number of homestead applications that will be filed with county auditors because of the expanded eligibility. The reimbursement equals 1% of the total homestead tax reductions in the county. The reimbursement is payable from the General Revenue Fund on August 1 each year.

The act's 1% reimbursement to county auditors is in addition to the reimbursement counties receive under continuing law for the homestead exemption. The existing reimbursement equals 2% of the homestead tax reduction; it is credited to the county general fund for payment to the county auditor and county treasurer. To the extent the act increases the amount of the homestead tax reduction, it increases the existing 2% reimbursement proportionately, in addition to the act's 1% reimbursement, so that the total county reimbursement would equal 3% of the total amount of homestead reductions in the county.

Application date

(Section 803.06)

The changes made by the act to the homestead exemption first apply to real property taxes levied for tax year 2007. The act's homestead changes first apply to manufactured home taxes in tax year 2008. The deadline to file original applications for the new reduction is October 1, 2007; under prior law, the deadline would have been June 4, 2007. A special set of deadlines applies for qualifying residents of housing cooperatives, whereby the resident must apply to the cooperative management by September 1, and the cooperative must file those applications with the auditor by October 1.

Prompt deposit of tax payments

(R.C. 5703.058)

The act requires the Tax Commissioner and the Treasurer of State to consult and jointly adopt policies and procedures for the processing of payments of taxes administered by the Tax Commissioner. The policies and procedures are to ensure that payments are deposited in or credited to the appropriate account or fund within 30 days after receipt by the Commissioner or Treasurer. The Commissioner and the Treasurer must implement these policies and procedures for all payments received on or after January 1, 2008. The policies and procedures supplement the rules adopted by the Treasurer under continuing law, which require twice-weekly remittances to the Treasurer but do not expressly establish a deadline for crediting or depositing of tax payments (see R.C. 113.08 and Ohio Admin. Code 113-1-01).

Kilowatt-hour tax: self-assessor rate reduction

(R.C. 5727.81(C)(2); Section 757.01)

Continuing law authorizes commercial or industrial purchasers of large quantities of electricity to self-assess the kilowatt-hour tax. A self-assessing purchaser must pay the tax at the rate of $.00075 per kilowatt hour on the first 504,000,000 kilowatt hours distributed through the purchaser's meter or to a single location, and 4% of the total price of all electricity distributed to that meter or location.

The act reduces the tax rate a self-assessing purchaser owes on the total price of all electricity distributed to the purchaser's meter or to a single location, from 4% to 3.5%, beginning with the meter reading period that includes July 1, 2008. The $.00075 rate on the first 504,000,000 kilowatt hours distributed to the self-assessing purchaser remains the same.

The act requires that the Tax Commissioner review the percentage rate for the total price of electricity every two years during biennial budget deliberations. The review must consider electricity price fluctuations that have occurred in the most recent two fiscal years and other factors influencing Ohio's economy.

Extension of the Ohio coal tax credit

(R.C. 5733.39)

Electric companies may claim a nonrefundable tax credit against their corporation franchise tax liability for using coal extracted in Ohio. The credit is $1 per ton of Ohio coal burned before January 1, 2008, in a coal-fired electric generating unit, provided that (1) the unit is owned and used by the company claiming the credit, or is leased and used by that company under a sale and leaseback transaction, and (2) a "compliance" facility (i.e., pollution control equipment) is attached to, incorporated in, or used in conjunction with the unit. Individuals or estates that are pass-through entity investors may claim the credit against income tax liability.

The act extends the tax credit ostensibly for two additional years, so that the credit is available for Ohio coal burned in a qualifying coal-fired electric generating unit before January 1, 2010. In the case of the corporation franchise tax, the extension is effective only for one year--i.e., for Ohio coal burned during the corporation's taxable year that ends in 2008, because the franchise tax on general corporations expires at the end of 2009. In the case of the income tax, the duration of the extension is not clear. Although the act states that the credit applies for Ohio coal burned through the end of 2009, when read in conjunction

with existing law (R.C. 5747.31(C)) the credit appears to be limited to taxable years ending before "taxable year 2009."

Sales and use tax sourcing requirements

Simplified sales and use tax administration act

In 2002, the General Assembly amended Ohio's sales and use tax laws and enacted Chapter 5740. to adopt a model act known as the Simplified Sales and Use Tax Administration Act. This act, which has been enacted by several other states, addresses a tax collection issue arising from federal constitutional law. Under U.S. Supreme Court decisions, a state is barred from compelling a seller with no physical presence in the state to collect that state's sales or use tax even if the seller sells and delivers goods to a customer in that state. The model act addresses this issue by creating a collection system in which sellers voluntarily agree to collect participating states' sales and use tax. The system is intended to simplify the process of determining the tax jurisdiction in which a sale is deemed to be taxable, computing the tax due, and remitting the revenue to the appropriate tax jurisdiction.

State participation in collection system

For a state to participate in the simplified collection system, it must be a full member of the Streamlined Sales and Use Tax Agreement (SSTA), which requires the enactment of certain uniform provisions. One of these provisions addresses how vendors must determine the tax jurisdiction in which a sale is taxable. Under the SSTA, a state must require vendors to determine the appropriate tax jurisdiction by using "destination-based sourcing" rules. Under destination-based sourcing, a sale is generally deemed to occur where the goods or services are received by the customer. Destination-based sourcing rules stand in contrast to Ohio's traditional rules, which are largely origin-based. Under origin-based sourcing, a sale is generally deemed to occur where the vendor is located.

Deadline to comply with SSTA

The SSTA establishes a deadline by which states must comply with all of the agreement's provisions: January 1, 2008. If a state fails to do so, it does not become a full member in the agreement and may not participate in the agreement's simplified collection process.

Ohio has adopted all required provisions, but has not fully implemented destination-based sourcing. While Ohio law has required some vendors to convert from origin-based to destination-based sourcing, it has permitted a significant number of others--vendors with annual delivery sales of less than $30 million--to

continue using origin-based sourcing.[251] Prior law required all vendors who had not yet converted to convert before January 1, 2008.

Ohio's proposed amendment to the SSTA

(R.C. 5740.10)

In the act, the General Assembly states its intention to become a full member of the SSTA, but also states that Ohio's participation has been jeopardized because the SSTA does not resolve sourcing-related issues, and because of the agreement's impact on businesses within and outside Ohio having annual Ohio delivery sales of less than $500,000.

Ohio has submitted proposed amendments to the SSTA Governing Board that, if adopted by the board, would permit vendors with annual Ohio delivery sales of less than $100,000 to continue using origin-based sourcing.

Action on the proposed amendment

(R.C. 5740.10)

The act requires the Tax Commissioner to determine, by October 1, 2007, whether the SSTA Governing Board has amended the SSTA or interpreted it in such a manner that vendors with annual in-state delivery sales of less than $500,000 may continue using origin-based sourcing. If the Tax Commissioner determines that the SSTA has been so amended or interpreted, the Commissioner must certify the determination by journal entry by October 1, 2007, and provide notice of the determination on the Department of Taxation's web site. The Commissioner must also notify vendors and out-of-state sellers the Commissioner reasonably believes to be affected by the certification.

Certification not made

(R.C. 5739.033)

If the Tax Commissioner does not make the certification, the act permits vendors who have not converted to destination-based sourcing to continue sourcing their sales using origin-based rules. Vendors are permitted, however, to voluntarily convert to destination-based sourcing. If a vendor does convert, the vendor may not later convert back to origin-based rules. Vendors who have already converted must continue to use destination-based rules. Without a change

[251] A "delivery sale" is defined as a taxable sale in which the good or service is delivered to a tax jurisdiction different from the tax jurisdiction in which the vendor is located.

in the SSTA, Ohio would become noncompliant with the agreement on January 1, 2008.[252]

Certification made

(R.C. 5739.033(B)(3) to (5))

If the Tax Commissioner makes the certification, Ohio apparently would enter into full compliance with the SSTA. Vendors with annual Ohio delivery sales of $500,000 or more would be required to convert to destination-based sourcing by January 1, 2008, if they have not already done so.

If the certification is made, the act prescribes several other consequences as described below.

Vendors with delivery sales under $500,000

(R.C. 5739.033(B)(3) to (5))

In the case of certification, and consistent with the amended or newly interpreted SSTA, the act authorizes a vendor with annual Ohio delivery sales of less than $500,000 in 2007 and thereafter to continue using origin-based sourcing rules. The vendor may continue using origin-based sourcing rules so long as its delivery sales in Ohio for a calendar year never reach the $500,000 threshold. If the vendor reaches the threshold, it must convert to destination-based sourcing.

The act also permits vendors to convert to destination-based sourcing voluntarily. If the vendor converts, however, the vendor may not later convert back to origin-based sourcing.

Refunds and additional liability

(R.C. 5739.035(I)(2) and (3))

If the Tax Commissioner makes the certification, a purchaser may claim a partial tax refund or may owe additional tax under certain circumstances. A

[252] R.C. 5739.033(B)(2) and (5) conflict with R.C. 5739.035(I)(1). Together, R.C. 5739.033(B)(2) and (5) state that, if the Tax Commissioner does not make the certification, a vendor may continue to source its sales using origin-based sourcing unless it fails to provide the notice required under R.C. 5739.035(I)(1). The notice, however, is required only if the Tax Commissioner makes the certification. Thus, if the Tax Commissioner does not make the certification, R.C. 5739.033(B)(2) and (5) require the vendor to provide the notice while R.C. 5739.035(I)(1) relieves the vendor of that responsibility.

purchaser may claim a refund if the sale is a delivery sale by a vendor authorized to use origin-based sourcing and the tax collected and remitted is greater than the tax that would have been due if the sale had been sourced to the tax jurisdiction where the purchaser received the goods or service. The refund equals the difference between the two amounts. A refund is available only if the vendor's invoice or other similar document includes the notice described below. The refund must be claimed in the manner in which refunds are claimed under continuing law.

A purchaser is subject to additional liability if property is purchased from a vendor authorized to use origin-based sourcing, the purchaser removes the property from the tax jurisdiction where the purchaser received the property, and the tax the vendor collected and remitted is less than the tax that would have been due if the sale had been sourced to the tax jurisdiction where the purchaser takes the property. This additional liability also applies if the purchase is made from an out-of-state seller with annual Ohio delivery sales of less than $500,000.

Notice requirement

(R.C. 5739.035(I)(1))

Each vendor authorized to use origin-based sourcing must indicate clearly on the invoice or other similar document that the vendor is permitted to source its sales using origin-based rules. If the vendor fails to provide this notice, the vendor must begin using destination-based sourcing rules for all subsequent sales, and must cease using origin-based sourcing.

Out-of-state sellers with delivery sales under $500,000

(R.C. 5741.05(B) and (C))

If the Tax Commissioner certifies that vendors with annual in-state delivery sales of less than $500,000 are permitted to use origin-based sourcing rules, out-of-state sellers with Ohio delivery sales of less than $500,000 for 2007 and thereafter may collect Ohio use taxes at a single uniform rate equal to the state tax rate plus the lowest combined rate of tax levied in any tax jurisdiction (i.e., county or transit authority) in Ohio. If the out-of-state seller exceeds the $500,000 Ohio delivery sale threshold, the seller must collect use tax at the varying local rates.

Out-of-state sellers authorized to collect Ohio use tax at the single uniform rate must clearly indicate on each invoice or other similar document that the seller is authorized to collect use tax at the single rate. The act does not specify any legal consequence for the seller's failure to provide this notice.

The act permits an out-of-state seller authorized to collect Ohio use taxes at a single rate to voluntarily collect taxes at the varying local rates.

Distribution of revenue

(R.C. 5741.03)

The act requires a percentage of the revenue collected by out-of-state sellers from taxes paid at the single uniform rate to be distributed each year to the counties and transit authorities that levy a sales tax. The percentage to be distributed equals the total sales and use tax revenue distributed to counties and transit authorities in the calendar year that ended in the preceding fiscal year, divided by the sum of the total sales and use tax revenue distributed to those counties and transit authorities in that calendar year plus the total revenue collected in that calendar year from the state sales and use taxes.

From the amount required to be distributed to all counties and transit authorities each year, the act requires each county and transit authority to receive a quarterly distribution equal to one-fourth of a percentage of the total yearly distribution. The percentage equals the total sales and use tax revenue distributed to the county or transit authority in the calendar year that ended in the preceding fiscal year, divided by the total sales and use tax revenue distributed to all counties and transit authorities in that calendar year.

With respect to all other revenue generated by local use taxes, the act requires all revenue to be credited to the General Revenue Fund. From the General Revenue Fund, the funds are transferred to the Local Sales Tax Administrative Fund and the Permissive Tax Distribution Fund according to continuing law. From the Permissive Tax Distribution Fund, revenues are distributed to local tax jurisdictions according to continuing law.

Vendor and out-of-state seller liability

(R.C. 5739.035(J) and 5741.05(C)(3))

The act states that vendors using origin-based sourcing and sellers collecting use tax at the single uniform rate remain liable for taxes not collected and any penalties, interest, or other charges imposed by law if the vendor was not authorized to use origin-based sourcing, or if the seller was not authorized to collect use taxes at the single uniform rate.

Electronic sales and use tax remittance and reporting

(R.C. 5739.032, 5739.122, 5739.124, 5741.121, and 5741.122; Section 815.09)

Remittance requirements

Under continuing law, vendors and other persons required to remit sales and use tax to the state are required to do so by electronic funds transfer (EFT) if the required annual remittance exceeds $75,000. The due dates for remittances under prior law depended on the type of person remitting: direct payment permit (DPP) holders and consumers, vendors, and sellers. A DPP holder's and a consumer's tax remittance for a particular month (May, for example) had to be made as follows: by May 15 and 25, the person had to remit 37.5% of the person's tax liability for the preceding May. By June 23, the person had to determine its tax liability for May, subtract the payments made by May 15 and 25, and remit the balance due. Thus, the DPP's and consumer's remittances for May had to be made by May 15 and 25 and on or before June 23.

A vendor required to collect sales or use tax and remit the tax by EFT had to remit the tax either at the same times and same amounts as DPP holders and consumers, or at the same times but in different amounts. Instead of paying 37.5% of the liability for the same month of the prior year on the 15th and 25th day of the month, vendors could remit the actual amount collected in the first 11 days of the month by the 15th day, and the amount collected between the 12th and 21st day by the 25th day.

The act replaces the existing EFT remittance schedules with a new one that applies uniformly to all persons required to remit sales or use tax by EFT. Such a person must remit 75% of its anticipated tax liability for a month by the 23rd day of that month. Then, by the 23rd of the next month, the person must determine its actual tax liability for the preceding month, subtract the pre-payment made in the preceding month, and remit the balance due.

Penalties

Under ongoing law, if a person required to remit sales and use tax electronically fails to remit a payment, the Tax Commissioner may impose a charge not to exceed 5% of the unpaid amount.

Under the act, the Commissioner also may impose the 5% charge if the person's pre-payment of 75% of its anticipated tax liability for that month is less than 75% of its actual liability for that month unless the pre-payment is at least equal to the person's actual tax liability for the same month in the preceding year.

Electronic reporting requirements

The act authorizes the Tax Commissioner to require any person that must remit tax by electronic funds transfer to also file returns and reports electronically. The Commissioner may prescribe the electronic means by which reports and returns may be filed, including by using the Ohio Business Gateway. A person required to file electronically may be excused by the Tax Commissioner upon good cause shown.

The Tax Commissioner is authorized to levy a charge against a person who fails to file electronically when required to do so. The charge for the first two failures is 5% of the amount required to be reported. The charge is 10% for subsequent failures. The charge is in addition to any other charge or penalty authorized under the sales and use tax law. The Commissioner may waive the charge and adopt rules governing waivers.

Nuclear plant-related utility property tax replacement payments

(R.C. 5727.84(D); Section 757.06)

Under continuing law, taxing districts receive property tax replacement payments from a portion of the kilowatt-hour and natural gas excise tax revenues to offset property tax revenue losses resulting from legislated reductions in the assessment rate on the tangible personal property of electric companies and natural gas companies during deregulation of those industries. For each taxing district, the Tax Commissioner was required to determine its tax value loss not later than January 1, 2001, and, in the case of its electric company tax value loss, the Commissioner also had to consider any losses resulting from any nuclear power plant within a taxing district's territory. The determination was based on the reduction in value of electric company tangible personal property between tax years 2000 and 2001.

The act requires the Tax Commissioner and the Department of Education to recompute the electric company tax value loss and related figures for each taxing district having a nuclear power plant within its territory if the taxing district experiences a reduction of more than 10% in the assessed value of electric company tangible personal property between tax years 2005 and 2006. The recomputation provides additional utility property tax replacement payments to such a taxing district. Notwithstanding the deadlines prescribed by continuing law to the contrary, the Tax Commissioner and Department of Education must re-determine all losses, perform all of the computations, and make all of the certifications and payments described in the utility property tax replacement payment law in connection with the additional electric company tax value loss. The act declares the provision to be remedial.

Sales and use tax vendor discount

(R.C. 5739.12(B))

Continuing sales tax law authorizes vendors who collect sales and use taxes to retain a percentage of the tax collections if they report and remit the tax to the state by the deadline. The "discount" percentage is 0.9% through June 30, 2007, and is scheduled to be reduced to 0.75% on and after July 1, 2007.

The act denies this discount to any vendor using a certified service provider that receives a monetary allowance for performing the vendor's sales and use tax functions in Ohio. A certified service provider is a person that acts as a vendor's agent to collect and remit, and otherwise perform a vendor's sales and use tax functions in a state, on behalf of the vendor. Certified service providers primarily assist out-of-state vendors with compliance with a state's sales and use tax laws under the Streamlined Sales and Use Tax Agreement.

Sales tax on motor vehicles purchased by nonresidents

General rule, exceptions, and procedure

(R.C. 4505.06(F)(6), 5739.02(B)(23), 5739.029, 5739.033(C), 5739.213; Section 803.09)

Under prior law, sales of motor vehicles by a dealer to a nonresident were not subject to the state sales tax or any local use tax if the consumer executed and delivered to the dealer an affidavit affirming the consumer's nonresidency and intent to remove the vehicle out of Ohio immediately and title or register it in another state.

The act narrows this exemption and provides two additional circumstances under which motor vehicle sales to nonresidents are exempted. The existing nonresident exemption is narrowed to apply only if the state where the nonresident takes the vehicle or titles or registers it provides a similar exemption to residents of Ohio. If the dealer has accepted the affidavit in good faith, the dealer may rely on the representations made in the affidavit. The dealer must keep a copy of the affidavit and send the original and one copy to the clerk of courts along with the application for certificate of title. The clerk of courts must forward the original affidavit to the tax commissioner. (A temporary procedure, explained below, applies to sales before July 1, 2008.)

Even if the nonresident's state does not provide a similar nonresident exception, the sale is exempt if the state where the nonresident takes the vehicle or titles or registers it either does not provide a credit for sales or use tax paid to Ohio, or does not impose a sales, use, or similar excise tax on the ownership or use

of motor vehicles. In either case, the act does not require the nonresident to execute an affidavit affirming the nonresident's intention to title or register in, or remove the vehicle to, another state.

The act specifies that any other Ohio sales or use tax exemption continues to apply (e.g., an exemption for government purchases).

If the sale of a motor vehicle to a nonresident is taxable because none of the exemptions applies, a modified tax is imposed in lieu of the rate or rates charged under continuing law for other transactions. The tax due equals the lesser of the amount that would be collected under Ohio law if the total tax rate were 6%, or the amount of tax that would be owed to the state where the nonresident takes the vehicle or titles or registers it. The Governor vetoed language requiring all credits and exemptions the other state provides to be considered in computing the tax that would be due to the other state.

The exemptions and modified tax rate do not apply to vehicle leases.

Distribution of tax

(R.C. 5739.213)

Of the tax revenue collected on a taxable nonresident motor vehicle sale, an amount equal to the tax collected at a rate of 0.5% is to be distributed to the county where the sale is deemed to have occurred using origin-based situsing rules (i.e., generally where the sale occurs). The remainder is to be credited to the state's general revenue fund.

Corporate residency

If the purchaser is a closely held corporation that does not engage in any business but is formed as an owner of a motor vehicle or other titled tangible personal property, the residency of the corporation for the purposes of the tax is the state of residence of the corporation's principal shareholder. (Under continuing law, the sales and use taxes apply to sales of shares in such a corporation because the shares represent ownership of the vehicle or property.)

Effective date

(Section 803.09)

The act's nonresident vehicle sale provisions apply to sales occurring on or after August 1, 2007.

Temporary tax remission procedure

(Section 757.40)

For sales occurring on or before June 30, 2008, the act requires each motor vehicle dealer to use the Ohio Business Gateway to remit payment of the sales and use tax collected on the sale of a motor vehicle to a nonresident. When applying to the clerk of courts for the certificate of title, the motor vehicle dealer need not remit the tax to the clerk of courts as required by ongoing permanent law, instead, the dealer must present the title application to the clerk indicating the amount of sales tax it collected. Upon receipt of the application and such information, the clerk of courts must issue the title.

The motor vehicle dealer must remit tax collected on sales to nonresidents from each of the dealer's locations on or before the tenth day of the month following the sale. Any unpaid tax may be collected by the Tax Commissioner from a dealer by assessment, and for any payment not received through the Ohio Business Gateway, the Commissioner may assess a late payment fee not to exceed $100 for each location.

The revenue collected for each sale must be credited to the state general revenue fund. One-twelfth is to be distributed to the county where the sale is situsued under origin-based situsing rules. The distribution must occur not later than 75 days after the Ohio Office of Information Technology issues its report, described below. The amount distributed to each county must be allocated among the county's funds as are any other sales and use tax revenue.

On or before the fifteenth day of each month, the Ohio Office of Information Technology must issue a report identifying each nonresident motor vehicle sales tax payment made through the Ohio Business Gateway. A copy of the report must be provided to the Tax Commissioner and the Registrar of Motor Vehicles. By the last day of the same month, the Registrar must compare the report with the motor vehicle titles issued by its office for vehicles sold to nonresident purchasers and report any discrepancies to the Tax Commissioner.

Property tax administration fund

(R.C. 5703.80)

Under continuing law, the state collects a fee for administration of property taxes. The fee is excised from property tax distributions to local taxing units. It is based upon two percentages: a percentage of the total tax reduction due to the 10% rollback for real property for the previous year, and a percentage of the taxes charged for the previous tax year against public utility personal property and

against business personal property of multi-county taxpayers. Under prior law, the percentage of public utility and business personal property taxes excised for the administration fund was scheduled to rise from 0.56% (for 2007) to 0.6% (for 2008 and thereafter).

The act further raises the percentage for personal property for 2009 and thereafter to 0.725%.

Sales tax exemption for school fundraising sales

(R.C. 5739.02(B)(9))

Prior law granted a sales tax exemption for sales made by school- and student-related nonprofit organizations (and by churches and other nonprofit or tax-exempt organizations), but only for six days in a year. All subsequent sales that year were taxable, and the organization had to collect the tax and remit it to the state as does any vendor. Each different organization or group affiliated with a particular primary or secondary school was allowed a separate six-day exemption.

The act removes the six-day limit on the exemption for primary and secondary school- and student-related sales, so that such sales are tax-exempt no matter how many days sales are conducted.

Prohibition against shipping cigarettes to any person other than an authorized recipient

(R.C. 2927.023)

Continuing law prohibits a person from causing to be shipped any cigarettes to any person who is not an "authorized recipient of tobacco products." Additionally, continuing law prohibits any common carrier, contract carrier, or other person from knowingly transporting cigarettes to any person in Ohio who the carrier or other person reasonably believes is not an "authorized recipient of tobacco products." Under prior law, one of the classes of persons considered authorized recipients of tobacco products were persons licensed as distributors of tobacco products under the law imposing the 17% excise tax on tobacco products other than cigarettes (e.g., cigars, pipe tobacco, chewing tobacco).

The act removes distributors of tobacco products from the list of authorized recipients of tobacco products and instead includes persons licensed as retail dealers purchasing cigarettes with the appropriate tax stamp.

The act makes no change to the other classes of persons considered authorized recipients of tobacco products: (1) licensed cigarette wholesale dealers, (2) export warehouse proprietors as defined in the Internal Revenue Code,

(3) operators of a customs bonded warehouse under federal law, (4) officers, employees, or agents of the state or federal government acting in an official capacity, (5) departments, agencies, instrumentalities, or political subdivisions of the state or federal government, and (6) persons having a consent for consumer shipment issued by the Tax Commissioner under the law allowing individuals to obtain cigarettes that are not reasonably available from Ohio retail dealers.

$300 cigarette excise and use tax exemption

(R.C. 5741.02 and 5743.331; Sections 818.03 and 818.09)

Prior law provided an exemption from the cigarette excise tax and the use tax for cigarettes brought into Ohio for some purpose other than resale--presumably for personal consumption. The exemption available each year was limited to a quantity of cigarettes having a wholesale value of $300 or less.

The act repeals this exemption.

The repeal take effective immediately.

Criminal penalty for possessing unstamped cigarettes

(R.C. 5743.99(A))

Continuing law imposes criminal penalties for possessing unstamped cigarette packs. If the number of cigarettes is more than 1,200, the penalty is a fourth degree felony; if the number of cigarettes is 1,200 or less, the penalty is a first degree misdemeanor for a first offense and a fourth degree felony for subsequent offenses.

The act reduces the criminal penalty for possession of unstamped packs of cigarettes when the number of cigarettes is 1,200 or fewer. For a first offense, the individual is guilty of a minor misdemeanor. For a subsequent offense, the individual is guilty of a first degree misdemeanor.

Definition of "other tobacco product"

(R.C. 5743.01(J))

The act clarifies that "other tobacco product" has the same meaning as "tobacco product" under the cigarette excise tax law. "Tobacco product" is defined for the purpose of the 17% tax on the wholesale price of products made from tobacco and used for smoking or chewing, or as snuff, such as cigars, pipe tobacco, and chewing tobacco, but not cigarettes, which are subject to the separate cigarette excise tax. "Other tobacco product" appears in one Revised Code section

authorizing the Tax Commissioner and the Commissioner's agents to enter and inspect the facilities and records of persons selling, and authorizing peace officers to stop and inspect vehicles believed to be transporting cigarettes or "other tobacco products." The provision takes immediate effect.

Public disclosure of cigarette and other tobacco product entities

(R.C. 5743.20)

Continuing law authorizes the Tax Commissioner to disclose on the Commissioner's website licensed "distributors" of cigarette or other tobacco products, which may include some manufacturers, wholesale dealers, and retail dealers. The purpose of the list is to assist retailers in complying with the existing prohibition against their purchase of cigarettes or other tobacco products from unauthorized persons.

The act expressly authorizes the Commissioner also to disclose cigarette manufacturers and importers, licensed cigarette wholesalers, and registered manufacturers, importers, and brokers of other tobacco products. The provision takes immediate effect.

Alternative fuel corporation franchise and income tax credits

(R.C. 5733.01(G)(2), 5733.48, 5733.98, 5747.77, and 5747.98)

The act creates a nonrefundable tax credit against the corporation franchise or income tax for a retail dealer that owns or operates a retail service station located in Ohio from which "alternative fuel" is sold to the general public and dispensed through a metered pump. Under the act, "alternative fuel" is E85 blend fuel, which must contain at least 85% ethanol derived from agricultural products, forest products, or other renewable resources,[253] and blended biodiesel, which must contain not less than 20% biodiesel derived from vegetable oils or animal fats. Both E85 blend fuel and blended biodiesel must meet American Society for Testing and Materials (ASTM) specifications.

As applied against corporation franchise tax liability, the tax credit may be claimed for tax years 2008 and 2009. For tax year 2008, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2007 that is included in the retail dealer's taxable year ending in 2007. For tax year 2009, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any

[253] E85 fuel may contain between 70% and 85% ethanol if the United States Department of Energy determines, by rule, that the lower percentage is necessary to provide for the requirements of cold start, safety, or other vehicle functions.

part of calendar year 2007 that is included in the dealer's taxable year ending in 2008, plus 13¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2008 that is included in that taxable year.

As applied against income tax liability, the tax credit may be claimed for taxable years ending in 2008 or 2009. For a retail dealer's taxable year ending in 2008, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2007 or 2008 included in that taxable year. For a taxable year ending in 2009, the credit is 15¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2008 included in that taxable year, plus 13¢ per gallon of alternative fuel sold and dispensed during any part of calendar year 2009 included in that taxable year.[254]

The tax credit must be calculated separately for each retail service station owned or operated by a retail dealer, and must be claimed in the order prescribed by continuing law. The credit is allowed only for fuel sold from a station in Ohio. The credit cannot exceed the amount of corporation franchise or income taxes due after deducting all other credits the dealer may claim in that order.

The act provides that under the income tax, pass-through treatment of the tax credit is allowed if the retail dealer is a pass-through entity. An equity owner of the retail dealer that is a pass-through entity may claim the owner's distributive or proportionate share of the credit for the equity owner's taxable year that includes the last day of the entity's taxable year.

Income tax deduction for expenses incurred in making an organ donation

(R.C. 5747.01(A)(25))

The act permits a taxpayer to deduct for Ohio income tax purposes certain expenses incurred by the taxpayer in making an organ donation. Specifically, a taxpayer is permitted to deduct up to $10,000 in travel expenses, lodging expenses, and salary and wages forgone by the taxpayer in connection with the taxpayer's donation, while living, of one or more of the taxpayer's human organs to another human being. Under the act, the human organs, donation of which qualifies a taxpayer for a deduction, include all or any portion of a liver, pancreas, kidney, intestine, or lung, and any portion of bone marrow.

A taxpayer is not permitted to deduct any expenses to the extent they were otherwise allowed as a state or federal income tax deduction or exclusion, or to

[254] The act's schedule for claiming the tax credit. Under the income tax has conflicting language: it states that the credit may be claimed for fuel sold during 2007, and that no credit may be claimed before 2008.

deduct any expenses for which the taxpayer was compensated by another source. The act specifies that a taxpayer may deduct organ donation expenses only once for all taxable years. Accordingly, a taxpayer who claims the deduction for any given taxable year would be prohibited from claiming the deduction for a subsequent taxable year.

The deduction applies to taxable years beginning in 2007 or thereafter.

School district income tax

Dual-purpose levies

(R.C. 5748.01(I) and 5748.02(B)(1); Section 818.03)

Under continuing law, school district income taxes may be levied for "any of" the purposes a school property tax may be levied--presumably only a single purpose, such as to pay for current expenses. The act expressly authorizes school boards to levy a dual-purpose income tax for both current expenses and permanent improvements. The school board must apportion the tax between the two purposes. The apportionment may be different from year to year.

The dual-purpose levy must be approved by voters. The procedure for levying a dual-purpose tax is the same as that for levying a single-purpose tax under continuing law, except that the resolution levying the tax must state how the tax is to be apportioned among the two purposes.

Rate reduction

(R.C. 5748.022)

Under prior law, once a school district income tax was levied it existed as enacted until it was repealed by the district's voters or its term expired.

The act authorizes a school board to adopt a resolution reducing the rate of a school district income tax in increments of 0.25%. No voter approval is required. The resolution must set forth the current rate of the tax, the reduced rate after adoption of the resolution, the purpose of the tax, the remaining number of years the tax will be levied or that it is levied for a continuing period of time, and the date the reduced tax rate will take effect. This date must be the ensuing first day of January occurring at least 60 days after a copy of the resolution is certified to the Tax Commissioner.

School district business personal property tax replacement payments

Under continuing law, taxation of business personal property is phased out through 2008. School districts and other local taxing units receive "replacement" payments to compensate them for the resulting reduction in locally generated property taxes.[255] After 2011, compensation begins to be phased down through 2018. The compensation is payable from revenue generated by the commercial activity tax (CAT).

Under prior law, the portion of the CAT revenue earmarked for compensating school districts was 70%, and remained so through FY 2018. Any of the 70% earmark not needed to make the phased down compensation was to be used for "school purposes" in an unspecified manner. After FY 2018, no CAT revenue was earmarked specifically for compensation or for school funding; all CAT revenue after FY 2018 was to be credited to the GRF.

CAT revenue earmarked for school funding indefinitely

(R.C. 5751.20(B) and 5751.21(G))

The act extends the 70% earmarking of CAT revenue for school purposes indefinitely beyond FY 2018. The remaining 30% will be credited to the GRF.

School district state aid offset determination and GRF transfers

(R.C. 5751.21(A) and (E))

Under continuing law, school districts' direct compensation from CAT revenue is offset to account for the fact that the school funding formula produces increased state funding as taxable property values decline. This offset is called the "state education aid offset." Under prior law, the offset had to be computed by the Department of Education by July 31 each year, and the Department was required to certify it to the Director of Budget and Management by August 5. Because state school funding is paid from the General Revenue Fund, fund transfers are made from the replacement fund (from CAT revenue) to the GRF to compensate the GRF for the increased state funding payments. The transfers are made once per calendar quarter.

The act requires the Department of Education to "consult with" the Director of Budget and Management in determining each school district's state education aid offset and the net replacement payment due after subtracting the offset. The

[255] Compensation also is payable for the phase-out of telecommunications personal property, which is phased out through 2010.

Department and the Director must agree upon the offset determinations by July 20, which is 16 days earlier than the prior requirement for the Department to certify offsets to the Director.

The act also provides that if there is not enough CAT revenue in the replacement fund to make the entire quarterly transfer to the GRF, the Director of Budget and Management must transfer as much revenue as is available when the transfer is required, and make up for any shortfall at later dates determined by the Director. Under prior law, no provision was made for making up any shortfall; instead, the Director was required to transfer the amount of revenue available, without being expressly required to later transfer the shortfall.

Technical corrections

The act makes technical corrections to the language governing replacement payments, including: (1) correcting the percentage of CAT revenue allocated among the GRF (10.6%) and the local taxing unit replacement fund (19.4%) in FY 2013 (the percentages were inadvertently reversed in the enacting legislation), (2) specifying that, after FY 2018, school districts' fixed-sum levy losses are to be computed on the basis of nonemergency levies remaining in effect after 2018, but not on the basis of emergency levies after that year, and (3) adjusting the amounts to be paid among the thrice-annual payments in FY 2011 and FY 2012.

Utility property tax replacement payments

New school districts

(R.C. 5727.85(J)(3))

Under continuing law, school districts receive property tax replacement payments from a portion of the kilowatt-hour and natural gas (Mcf) tax revenues to offset the fixed-rate and fixed-sum levy losses that occurred when the assessment rate on the tangible personal property of electric companies and natural gas companies were reduced.

The act extends from 2008 to 2009 the time during which a new school district created between 2000 and 2004 will receive 100% of its utility property tax replacement payments for current fixed-rate levy losses. Under prior law, the payments were scheduled to begin phasing out in 2009 (at 75%); under the act the phase-out resumes in 2010 as originally scheduled (i.e., 70% in 2010 and 2011, and declining in steps thereafter).

Use of excess for school districts

(R.C. 5727.85(H))

Continuing law requires the Director of Budget and Management to transfer excess School District Property Tax Replacement Fund balances to the Half-Mill Equalization Fund. The Half-Mill Equalization Fund is used to supplement the local contribution to a district's School Facilities Commission-assisted building project if the district has below-average per-pupil property valuation. Payments to a school district are to be used for maintenance of new or renovated buildings. Any unused balance in the Half-Mill Equalization Fund may be transferred to the School Building Trust Fund upon the request of the Ohio School Facilities Commission and with the approval of the Controlling Board.

The act continues to authorize excess money in the Replacement Fund to be transferred to the Half-Mill Equalization Fund and used to supplement local school building maintenance funds, but any balances in the Half-Mill Equalization Fund not needed for that purpose must be transferred to the General Revenue Fund.

Use of excess for other taxing units

(R.C. 5727.86(C) and (E); Section 815.03)

Under continuing law, local taxing units are scheduled to receive utility property tax replacement payments through fiscal year 2016. As with the school districts' replacement payments, these payments are funded by a percentage of the kilowatt-hour and natural gas excise tax revenue and are computed on the basis of forgone property taxes. If the excise tax revenue percentage earmarked for replacement payments generates more revenue than is needed to fulfill the computed replacement payment obligation, the balance is distributed among local taxing units under a two-stage formula. In the first stage, 50% of the excess is distributed among counties on a per-capita basis, and 50% is divided among counties in proportion to the computed property tax losses of all taxing units in each county. In the second stage, the distribution to each county is apportioned among taxing units in the county in proportion to each taxing unit's current property tax revenue as compared to all taxing units. All payments received by a taxing unit must be credited to its general fund. The payments are made twice per year.

The act specifies that the amount the county government receives as its share of the excess distribution (in the county's status as a taxing unit, not as the distribution conduit) is to be divided among the various county-wide levies (e.g., for MRDD, children services, etc.) in proportion to the property taxes concurrently

raised by each such levy, rather than being credited entirely to the county general fund.

The act also requires that if any taxing unit's allocated share of the excess distribution is less than $5, the share is to be retained in the county undivided income tax fund in the county treasury instead of being distributed, and is to be added to the next payment due to the taxing unit.

The act's changes take immediate effect.

Administrative fee compensation

(R.C. 5727.87)

Continuing law compensates counties for property tax-related administrative fees that are no longer received by counties because of previously legislated reductions in public utility property taxes. The administrative fees are used to support counties' property tax assessment and collection duties. The fees are computed as a percentage of property tax collections, so the reductions in public utility property assessment rates from prior legislation caused a reduction in the administrative fees, even though county assessment and collection duties remained largely the same as under pre-existing law. Under prior law, compensation in and after 2007 was set equal to the amount by which a county's 1999 administrative fees exceeded the current year's administrative fees. Compensation is excised from the property tax replacement payments paid to taxing units; compensation for administrative fees ends after 2011.

The act prevents annual compensation paid to a county in and after 2007 from exceeding the compensation paid in 2006.

Technical correction in the municipal income tax for electric light companies

(R.C. 5745.02(C))

The act corrects the reference to the term "consumer" in the law governing municipal income taxes on electric companies, by changing the term to "customer" to conform the term to the cross-referenced term in R.C. 5733.059. In determining the municipal sales factor for purposes of calculating the municipal income tax for electric light companies and telephone companies, sales of electricity directly to a "consumer" is a sale of tangible personal property that is apportioned to the municipal corporation where the electricity was received by the purchaser. But the term "consumer" is not used in R.C. 5733.059--"customer" is the correct term.

Municipal tax on electric and telephone companies

(R.C. 5745.13)

Municipal income taxes charged against telephone companies and electric companies are reported and paid to the state under uniform laws (R.C. Chapter 5745.). The Tax Commissioner administers collection of such taxes and distributes the revenue among the appropriate cities and villages where a company operates and owes tax.

Prior law could be read to require the Tax Commissioner to notify a municipal corporation if an electric or telephone company's income has been reapportioned among municipal corporations, the company's total tax liability has increased or decreased by more than $500, and the tax owed to the municipal corporation has increased or decreased.

The act forecloses this possible reading by requiring the Tax Commissioner to notify a municipal corporation only if the reapportionment of the company's income affects the tax owed to that municipal corporation by more than $500.

Refunds of municipal tax on electric and telephone companies

(R.C. 5745.05(B))

Under continuing law, the state collects a fee for administering municipal income taxes on electric and telephone companies. The fee is 1.5% of the revenues collected, and it is excised from the collections. The state forwards the remaining 98.5% to the appropriate municipal corporation.

If a taxpayer has overpaid tax and the overpayment is greater than the taxes the taxpayer is estimated to pay over the next 12 months, the taxpayer may request a refund equal to the overpayment. The taxpayer receives the refund directly from the municipal corporation. When the municipal corporation refunds the overpayment, it refunds both the 98.5% it received from the state plus the state's 1.5% administrative fee.

Under the act, when a municipal corporation pays a refund, the state is required to reimburse the municipal corporation for the administrative fee portion of the refund. This amount is included in the quarterly computation of the tax revenues the state must forward to the municipal corporation.

Air Force bases: Municipal income taxation

(R.C. 718.01(F)(11); Section 818.03)

Beginning August 1, 2007, the act exempts from municipal income taxes compensation paid to a person employed within the boundaries of a United States Air Force base that is used for housing members of the Air Force and is a center for Air Force operations, unless the person is subject to the municipal income tax by virtue of being a resident of or domiciled in the municipal corporation.[256] If the compensation is subject to taxation because of residence or domicile, the municipal income tax is payable only to the municipal corporation of residence or domicile. (Also, see "***Military bases: Annexation***" under Local Government.)

Municipal income tax information disclosure

(R.C. 718.13)

The act expressly permits a municipal corporation to authorize its municipal tax administrator to publish statistics in a form that does not disclose information with respect to particular taxpayers. The authorization must be enacted by ordinance or resolution.

Continuing law generally prohibits the disclosure of income tax information gained from tax returns, investigations, and other sources unless disclosure is required by a judicial order; or unless the disclosure is in connection with the performance of a person's official duties or with the official business of the municipal corporation, and then only if authorized by Ohio or municipal law.

Municipal income tax withholding

(R.C. 718.03)

Under continuing law, a municipal corporation may require an employer (or an employer's agent) to withhold income tax from a payment to an employee only if the payment falls within the Internal Revenue Code's comprehensive definition of "wages." This definition is used as the wage base for Medicare tax withholding; it includes payments made on account of an employee's sickness or disability unless paid pursuant to a state's workers' compensation law. Accordingly, under prior law municipal income tax could be withheld from payments made on account of an employee's sickness or disability.

[256] Continuing law prohibits municipal corporations from levying income taxes on the military pay of members of the United States armed forces or their reserves, including the Ohio National Guard (R.C. 718.01(F)).

The act prohibits municipal corporations from requiring income tax to be withheld from such payments.

Telecommunications property tax phase-out

Taxation of telecommunication property

(R.C. 5711.01 and 5727.06(A)(5); Section 803.07)

Prior law required all the tangible personal property of a telephone, telegraph, or interexchange telecommunications company to be "listed and assessed for taxation" under the law governing the listing and assessment of general business personal property (i.e., R.C. Chapter 5711.) beginning in 2007.

The act modifies this rule by specifying that such property is to be valued in the same manner as other public utility property--i.e., by using composite annual allowances and other procedures prescribed for public utility property--as it was before 2007. The act also requires those companies to continue filing a single return with the Tax Commissioner under the public utility property law, instead of with each county auditor where the property is located, even if the company has property in only one county.

Prior law also required property leased to such a company to be taxed on 20% of its value in 2007 and on a percentage that decreases by five percentage points per year through 2011, when the property is no longer taxable.

The act specifies that such leased property is to be taxed at the same assessment percentage as is general business personal property (12½% in 2007 and 6¼% in 2008) until the general business property tax is completely phased out at the end of 2008, unless the property is used to render public utility service or is leased under a sale and leaseback arrangement. Then, in 2009 and 2010, such property is to be assessed at the phase-down percentage specified in continuing law for such property (10% in 2009 and 5% in 2010), and the value of the property is to be determined in the same manner as property owned by those companies.

No exemption for public utility personal property

(R.C. 5727.06(E))

The act specifies that the $10,000 exemption for personal property (under R.C. 5709.01) is not applicable to any personal property valued under the public utility property valuation law.

Apportionment of property

(Section 757.07)

The tax on tangible personal property of telephone companies, telegraph companies, and interexchange telecommunications companies is currently being phased out through 2010. In 2007, all such property is being taxed on 20% of its true value, 15% in 2008, 10% in 2009, and 5% in 2010. The property will be exempted from taxation in 2011 and thereafter.

A temporary provision of law enacted in Am. Sub. H.B. 66 of the 126th General Assembly (the main operating operations act for FY 2006 and FY 2007) requires that, during this phase-out period, telecommunications property must be listed and assessed in the same manner as business personal property instead of as public utility property, except that the value of a company's property will continue to be apportioned among taxing units as it was before the phase-out was enacted--i.e., according to wire-miles or the cost of property located in each taxing unit. This temporary provision of law will expire at the end of the FY 2006-FY 2007 biennium.

The act renews the temporary provision of law enacted in Am. Sub. H.B. 66 for the fiscal biennium beginning July 1, 2007.

State Taxation Accounting and Revenue System (STARS)

(Section 757.10)

The act authorizes the Office of Information Technology, in conjunction with the Department of Taxation, to acquire, pursuant to state purchasing procedures, the State Taxation Accounting and Revenue System ("STARS"), including, but not limited to, the application software and installation and implementation of the software, for use by the Department of Taxation. The act describes STARS as an integrated tax collection and audit system to replace all of the state's existing separate tax software and administration systems for the various taxes collected by the state. Any lease-purchase arrangement used by OIT to acquire STARS, including any fractionalized interests in the arrangement (e.g., participations, certificates of participation, shares, or other instruments or agreements) must provide that at the end of the lease period, STARS becomes the property of the state.

County use of DTAC funds

(Section 757.30)

Continuing law requires 5% of all delinquent real property, personal property, and manufactured and mobile home taxes and assessments to be deposited in a county's delinquent tax and assessment collection (DTAC) fund, to be used solely in connection with the collection of those taxes and assessments.

The act permits the board of county commissioners of a county with a population exceeding 1.2 million to authorize up to $3 million in the DTAC fund to be used to prevent residential mortgage foreclosures in the county and for nuisance abatement of foreclosed dwellings. The funds must be used to provide financial assistance in the form of loans to borrowers in default on their home mortgages, including to pay late fees, clear arrearage balances, and augment monies used in the county's "foreclosure prevention program." The funds also must be used to assist municipal corporations in the county in the nuisance abatement of deteriorated residential buildings in foreclosure, including paying the costs of boarding up buildings and lot maintenance and demolition costs. Funds cannot be accessed or used for these purposes after June 30, 2008.

Township TIF resolutions

(Section 757.08)

The act authorizes a board of township trustees of a limited home rule township to adopt a resolution by unanimous vote declaring tax increment financing (TIF) resolutions adopted by the board in December 2005, to have had an immediate effective date. The immediate effective date applies to TIF property tax exemptions granted in such a resolution if the application for exemption is pending before the Tax Commissioner on the act's effective date, or if it is filed or refiled within 90 days after that effective date.

Under Ohio law as it existed in 2005, emergency township resolutions became effective ten days after the resolution was filed with the township clerk. Ohio law also provides that a property tax exemption granted as a result of a township TIF resolution begins in the tax year beginning after the resolution takes effect. Accordingly, an emergency township TIF resolution adopted in late December 2005 may not have taken effect until 2006, which would delay the TIF tax exemption and the associated payments in lieu of taxes.

Motor fuel tax "discount"

(Section 603.05)

H.B. 67 of the 127th General Assembly (the biennial transportation appropriations act) granted a temporary "discount" against the motor fuel excise tax for retail fuel dealers. The discount allows retail dealers to claim a refund equal to 0.90% of the excise tax paid on the fuel purchased by the retail dealer. The refund could be claimed for the four semiannual periods during the FY 2008-2009 biennium.

The act converts the temporary 0.90% discount for retail fuel dealers into a discount for the motor fuel dealers that are liable for the motor fuel excise tax (generally, wholesalers and distributors of fuel). The discount is to be claimed on the dealer's monthly report, and is allowed only if the report is filed on time and the tax due with the report is paid on time.

DEPARTMENT OF TRANSPORTATION (DOT)

- Authorizes the Director of Transportation to conduct a 12-month pilot project for energy price risk management by entering into a contract with a qualified provider for services that may include rate analysis, negotiation services, market and regulatory analysis, budget and financial analysis, and mitigation strategies for volatile energy sources, but not energy procurement.

- Clarifies the Transportation Review Advisory Council project selection provisions of Am. Sub. H.B. 67 of the 127th General Assembly by declaring that the requirement to construct projects selected as Tier I projects on December 20, 2006, does not require previously selected Tier I projects to be reduced in priority.

- Names a portion of State Route 118 the "Earl Baltes Highway."

- Designates the portion of State Route 2, located within the city of Willoughby only, as the "Brian Montgomery Memorial Highway."

- Designates a portion of State Route 44 within Lake County as the "LCpl Andy Nowacki Memorial Highway."

Department of Transportation Energy Risk Management Pilot Program

(Section 755.03)

The act authorizes the Director of Transportation to conduct a 12-month pilot project to be completed not later than June 30, 2009, for energy price risk management by entering into a contract with a qualified provider of energy risk management services. The act specifies that the contract may include rate analysis, negotiation services, market and regulatory analysis, budget and financial analysis, and mitigation strategies for volatile energy sources, including natural gas, gasoline, oil, and diesel fuel. However, the contract may not include energy procurement and also may not subject more than 30% of the Department's annual energy needs to the risk management services. The act also requires the contract to specify that the Department may share the analysis and services of the energy risk management services provider with all state agencies and operations.

The Director is required to select the energy risk management services provider through a qualifications-based selection process, subject to Controlling Board approval. The act allows the Director to use revenues from the state motor vehicle fuel tax or other funds appropriated by the General Assembly for the pilot project to pay amounts due under the contract and requires the Director to deposit any amounts received under the contract into the Highway Operating Fund.

Transportation Review Advisory Council

(Sections 603.05 and 603.06)

Under law unaffected by the act, the Transportation Review Advisory Council (TRAC), has established policies and procedures to prioritize major new construction projects for the Department of Transportation (ODOT). TRAC ranks projects as Tier I (projects recommended for construction during the upcoming six-year construction project), Tier II (projects funded for additional environmental, design, or right-of-way development activities necessary before the projects are available for construction), and Tier III (projects reviewed by TRAC but not recommended for further development) projects.

Am. Sub. H.B. 67 of the 127th General Assembly (the Transportation Appropriations Act) required ODOT to construct the major new construction projects selected by TRAC on December 20, 2006, as Tier I projects for construction in fiscal years 2007 through 2013 and prohibited ODOT from undertaking other major new construction projects until construction of those Tier I projects has commenced in accordance with the December 20, 2006, recommendations. Am. Sub. H.B. 67 allowed TRAC to recommend additional major new projects in accordance with the policies promulgated by TRAC, but

specified that new Tier I projects could not be given priority over Tier I projects recommended on December 20, 2006.

The act clarifies that the requirement of Am. Sub. H.B. 67 for ODOT to construct the major new construction projects selected by TRAC on December 20, 2006, as Tier I projects for construction in fiscal years 2007 through 2013 before other new Tier I projects, does not require that projects selected as Tier I projects prior to December 20, 2006, be downgraded in priority. The act specifically allows ODOT to continue with the previously selected projects in accordance with the prior recommendations.

"Earl Baltes Highway"

(R.C. 5533.531)

The act names the portion of State Route 118 between the municipal corporation of St. Henry and State Route 47 the "Earl Baltes Highway" in tribute to a race car track owner and promoter. The act also authorizes the Director of Transportation to erect suitable markers along the highway indicating the name.

"Brian Montgomery Memorial Highway"

(R.C. 5533.632)

The act designates the portion of State Route 2, running in an easterly and westerly direction and located within the municipal corporation of Willoughby only, as the "Brian Montgomery Memorial Highway." The Director of Transportation is authorized to erect suitable markers along the highway indicating its name.

Brian Montgomery was a lance corporal in the United States Marine Corps; he was killed in Iraq on August 1, 2005.

"LCpl Andy Nowacki Memorial Highway"

(R.C. 5533.91)

The act designates the portion of State Route 44 that is located within Lake County and that commences at the intersection of that state route and State Route 2 and extends in a northerly direction and ends at Headlands Beach State Park as the "LCpl Andy Nowacki Memorial Highway." The Director of Transportation is authorized to erect suitable markers along the highway indicating its name.

Andy Nowacki was a lance corporal in the United States Marine Corps; he was killed in Iraq on February 26, 2005.

OHIO TURNPIKE COMMISSION (TPC)

- Authorizes the Turnpike Commission to participate in a multi-jurisdiction electronic toll collection agreement, including collecting and remitting revenue between other participating entities and agencies and setting fees or charges by rule; allows the Commission to adopt rules establishing owner or operator civil liability for failure to comply with toll collection rules; and allows the Commission to retain revenue from a civil violation of toll collection rules.

Electronic toll collection on the Ohio Turnpike

(R.C. 5537.04, 5537.16, and 5537.99)

The Ohio Turnpike Commission has general authority to make contracts, enter into agreements as are necessary or incidental to the performance of its duties, and adopt rules. Law retained by the act also authorizes the Commission to adopt rules as it considers advisable for the control and regulation of traffic on any turnpike project. The rules of the Commission with respect to speed, axle loads, vehicle loads, and vehicle dimensions apply notwithstanding such violations established under general traffic law provisions; violations of these rules are a minor misdemeanor on a first offense, and subsequent offenses are a fourth degree misdemeanor.

The act grants the Turnpike Commission express authority in regard to a multi-jurisdiction electronic toll collection agreement. (An example is the multi-jurisdictional electronic toll collection system known by the trade name E-ZPass, which is a system under which drivers prepay tolls and attach a small electronic device to their vehicles; tolls are automatically calculated and deducted from prepaid accounts as customers pass through designated toll lanes, thereby taking cash, coins, and toll tickets out of the toll collection process.)

Specifically, the act authorizes the Commission to (1) participate in a multi-jurisdiction electronic toll collection agreement and collect or remit tolls, fees, or other charges to or from entities or agencies that also participate in such an agreement, (2) fix and revise by rule, from time to time, such permit fees, processing fees, or administrative charges for the prepayment, deferred payment, or nonpayment of tolls and use of electronic tolling equipment or other Commission property, and (3) adopt rules for the purpose of establishing owner or operator liability for failure to comply with toll collection rules. Under the act, failure to comply with toll collection rules may be a civil violation and whoever

violates such rules when the offense is a civil violation is subject to a fee or charge established by the Commission by rule.

The act further specifies that all fees or charges assessed by the Commission against an owner or operator of a vehicle as a civil violation for failure to comply with toll collection rules are revenues of the Commission. This differs from fines for violations of Commission rules that are misdemeanor offenses, which are distributed in accordance with the provisions governing the distribution of fines collected from persons apprehended or arrested by the State Highway Patrol, with a portion credited to the General Revenue Fund (after sufficient revenue is credited to the Security, Investigations, and Policing Fund to support specific activities of the Patrol), a small portion credited to the Trauma and Emergency Medical Services Grants Fund, and the remainder distributed based on the court that imposes the fine (R.C. 4501.11 and 5503.04, not in the act).

VETERANS HOME (OVH)

- Creates the Medicare Services Fund to support the operations of veterans' homes.

Medicare Services Fund

(R.C. 5907.15 and 5907.16)

The act creates the Medicare Services Fund in the state treasury to receive revenue resulting from federal reimbursement of Medicare services provided at state veterans' homes. Money in the fund is to be used to pay the operating costs of state veterans' homes. The act removes Medicare reimbursements from the Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund, and thus renames the fund as the Ohio Veterans' Home Rental and Service Fund.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Limits the balance in a county's Felony Delinquent Care and Custody Fund at the end of each fiscal year, beginning in FY 2008, and authorizes the Department of Youth Services to withhold and reallocate excess funds.

Balance in County Felony Delinquent Care and Custody Fund

(R.C. 5139.43)

The act limits the balance in a county's Felony Delinquent Care and Custody Fund at the end of each fiscal year, beginning June 30, 2008, to the total moneys allocated to the county for the care and custody of felony delinquents during the previous fiscal year, unless the county has applied for and been granted an exemption by the Director of Youth Services. The Department of Youth Services must withhold an amount equal to any money in the county's Felony Delinquent Care and Custody Fund that exceeds the limit at the end of each fiscal year from future payments to the county and reallocate the amount withheld. The act requires the Department to adopt rules for the withholding and reallocation of the excess funds and for the criteria and process for a county to obtain an exemption from the withholding requirement.

MISCELLANEOUS

- Repeals (1) the Tobacco Master Settlement Agreement Fund and the schedule for transferring moneys in the fund to various other trust funds, (2) the Education Facilities Endowment Fund, and (3) the section that creates a legislative committee to periodically reexamine the use of tobacco master settlement agreement money.

- Allows the Tobacco Use Prevention and Control Foundation to create a nonprofit corporation to raise money to help the Foundation conduct its tobacco use prevention duties.

- Removes a prohibition on the appropriation or transfer of GRF money for use by the Southern Ohio Agricultural and Community Development Foundation.

- Permits the state to assign and sell to the Buckeye Tobacco Settlement Financing Authority all or a portion of the amounts to be received by the state under the Tobacco Master Settlement Agreement.

- Creates the Buckeye Tobacco Settlement Financing Authority for the purpose of purchasing and receiving any assignment of the tobacco settlement receipts and issuing obligations that are not general obligations of the state.

- Requires the Auditor of State to annually audit the Buckeye Tobacco Settlement Financing Authority in accordance with Ohio's public office auditing law and permits the Auditor to hire an independent certified public accountant to conduct the audit.

- Requires the Buckeye Tobacco Settlement Financing Authority to prepare an annual operating and financial statement.

- Specifies that obligations the Authority issues are to be issued to pay the costs of capital facilities for a system of common schools throughout the state and state-supported or state-assisted institutions of higher education.

- Requires the Buckeye Tobacco Settlement Financing Authority to make quarterly reports to the General Assembly regarding the amounts in, and the activities of, each improvement fund receiving securitization proceeds, including subfund amounts and activity.

- Would have provided that bonds that are not issued due to capital improvements being paid for with the proceeds of the tobacco securitization are still to be considered as issued for purposes of calculating the 5% cap on the issuance of state bonds (VETOED).

- Regarding trust agreements between Ohio and a corporate trustee to secure obligations for various state-issued bonds, replaces the requirement that the trustee's principal place of business be in Ohio with a requirement that the trustee have a place of business in Ohio.

- Establishes distinct procedures for giving secondary notice in adjudications under the Administrative Procedure Act, depending upon whether there has been "refusal of delivery" or "failure of delivery" of the primary notice.

- Specifies that, in adjudications under the Administrative Procedure Act, an employee or agent of the agency may personally deliver notice at any time.

- Provides that any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of any of the prohibitions constituting the offense of having an unlawful interest in a public contract, or any contract securing the investment of public funds in which

a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of the prohibition against having an unlawful interest in a public contract, is void and unenforceable.

- Provides that any contract let by a regional airport authority in which a member of the authority's board of trustees is directly or indirectly interested is void and unenforceable.

- Requires the county auditor to provide an owner of residential rental property located in a county that has a population of more than 200,000 according to the most recent decennial census with notice of the requirement to file or update certain specified information about the residential rental property within 60 days after receiving the notice.

- Removes the criminal penalty (minor misdemeanor) for failing to comply with the existing requirement of filing or updating information related to residential rental property or from failing to satisfy the designation of agent requirement or the filing of the appropriate designation of agent document requirement and instead allows the county auditor to impose upon any person who violates any of these requirements a special assessment on the residential rental property that is the subject of the violation that is not less than $50 or more than $150 and provides that the special assessment may be appealed to the county board of revision.

- Designates May as Nutrition and Physical Fitness Month to increase awareness of the paramount roles that nutrition and physical fitness play in promoting a healthy lifestyle for all Ohioans.

- Authorizes the conveyance of state-owned real estate in Franklin County to the city of Columbus for a police heliport.

- Authorizes the conveyance to the city of Celina of the state's right of reverter in specified real estate in Mercer County for the mutual benefit accruing to the state and to the city of Celina from the reconfiguration of the entrance to the city park that is located on the land.

- Authorizes releasing, to Dairy Barn Southeastern Ohio's Cultural Arts Center, Inc., the state's reversionary interests that were retained in previous conveyances.

- Releases to the Dairy Barn Southeastern Ohio's Cultural Arts Center, Inc., the state's reversionary interests in land conveyed in Am. H.B. 552 of the 113th General Assembly and in Am. H.B. 385 of the 116th General Assembly for the purpose of removing impediments to financing of improvements to continue cultural arts programs.

Distribution under the Tobacco Master Settlement Agreement

Background

In November 1998 the Ohio Attorney General, along with the attorneys general of 45 other states, five U.S. territories, and the District of Columbia, entered into the Tobacco Master Settlement Agreement with the major American tobacco manufacturers to settle state lawsuits against the industry. Under the Agreement, Ohio receives settlement payments from the industry each year in perpetuity.

Tobacco Master Settlement Agreement Fund

(R.C. 183.01, 183.02, 183.021, 183.17, 183.33, 183.34, and 183.35)

Prior law required that Ohio deposit all payments it received under the Tobacco Master Settlement Agreement into the state treasury to the credit of the Tobacco Master Settlement Agreement Fund. Through 2025, the law provided for the transfer of the money in the Fund into the following trust funds following an established formula: the Tobacco Use Prevention and Cessation Trust Fund, the Southern Ohio Agricultural and Community Development Trust Fund, Ohio's Public Health Priorities Trust Fund, the Biomedical Research and Technology Transfer Trust Fund, the Education Facilities Trust Fund, the Education Facilities Endowment Fund, and the Education Technology Trust Fund. Also, the Director of Budget and Management was required to transfer to the Tobacco Settlement Oversight, Administration, and Enforcement Fund and the Tobacco Settlement Enforcement Fund necessary amounts to cover enforcement costs incurred by the Attorney General and the Tax Commissioner, respectively.

The act repeals the section that created the Tobacco Master Settlement Agreement Fund and the schedule for transferring moneys in the fund to the various other trust funds. The act also modifies ongoing law to reflect this repeal by changing several references to the fund in related sections.

Nonprofit corporation to raise funds for the Tobacco Use Prevention and Control Foundation

(R.C. 183.061)

Since Tobacco Master Settlement Agreement payments are eliminated as a funding source for the Tobacco Use Prevention and Control Foundation, the act permits the Foundation to form a nonprofit corporation under Ohio's Nonprofit Corporation Law for the purpose of raising money to aid the Foundation in the conduct of its duties under Ohio law to reduce tobacco use by Ohioans.

Southern Ohio Agricultural and Community Development Foundation

(R.C. 183.17 and 183.33)

Additionally, the act removes the authority of the Southern Ohio Agricultural and Community Development Foundation to request additional payments from the Tobacco Master Settlement Agreement Fund if the Foundation concludes that additional funding needs exist after its last scheduled allocation in 2011. The act further removes a prohibition on the appropriation or transfer of GRF money for the Foundation's use.

Education Facilities Endowment Fund

(R.C. 183.27 and 183.33)

Former law created the Education Facilities Endowment Fund in the state treasury as a source of revenue for constructing, renovating, or repairing primary and secondary schools in Ohio. The act repeals the section that created the fund and makes related changes to references to the fund.

Committee to reexamine use of Tobacco Master Settlement Agreement money

(R.C. 183.32)

Formerly, Ohio law required that in January every six years beginning in 2012, the Senate President appoint three senators and the Speaker of the House of Representatives appoint three house members to a committee to reexamine the use of Tobacco Master Settlement Agreement funds. The committee was to determine if the Tobacco Master Settlement Agreement's distribution and uses of revenue reflected Ohio's priorities and report to the General Assembly any recommended changes. The act repeals the section that created this committee.

Securitization of Tobacco Master Settlement Agreement payments

Overview

(R.C. 183.51 and 183.52)

The act permits the state to assign and sell to the Buckeye Tobacco Settlement Financing Authority all or a portion of the amounts to be received by the state under the Tobacco Master Settlement Agreement ("TMSA"). It permits the Authority to accept and purchase those amounts, and to issue and sell obligations, as provided by the act. These obligations are *not* to be general obligations of the state, but rather revenue bonds the debt service of which is to be paid by the tobacco settlement receipts received by the Authority.[257]

Creation of the Buckeye Tobacco Settlement Financing Authority

(R.C. 183.52)

The act creates the Buckeye Tobacco Settlement Financing Authority "for the sole purpose of purchasing and receiving any assignment of the tobacco settlement receipts and issuing obligations . . . to provide financing of essential functions and facilities."[258] The Authority consists of the Governor, the Director of Budget and Management, and the Treasurer of State.[259] The Governor serves as the chair of the Authority and the Director of Budget and Management as its secretary. The Authority may have other officers who need not be members of the Authority. Two members of the Authority constitute a quorum and the affirmative vote of two members is necessary for any action taken by vote of the Authority. Members of the Authority are to receive no added compensation for their services as such members, but may be reimbursed for their necessary and actual expenses incurred in the conduct of the Authority's business. The Office of Budget and Management must provide staff support to the Authority.

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[257] Consequently, the full faith and credit, revenue, and taxing power of the state cannot be pledged to the payment of debt service on the obligations (R.C. 183.51(P)).

[258] The act states that the Authority is "a body, both corporate and politic, constituting a public body, agency, and instrumentality of this state and performing essential functions of the state" (R.C. 183.52(A)). The act also expressly subjects the Authority to the Public Records Law and the Open Meetings Law (R.C. 183.52(C)).

[259] Each member may designate an employee or officer of their office to attend meetings. The designee, when present, is to be counted in determining whether a quorum is present, and may vote and participate in all proceedings and actions of the Authority. (R.C. 183.52(B).)

The Authority must be treated and accounted for "as a separate and independent legal entity" with its separate purposes, as set forth in the act, despite the existence of "common management." The assets, liabilities, and funds of the Authority cannot be commingled with those of the state, and contracts entered into by the Authority must be entered into in the name of the Authority and not in the name of the state.

Annual audits of the Authority

(R.C. 117.11, 117.112, 183.51(V), and 183.52(B))

Under continuing law, the Auditor of State is required to audit each public office (which means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio law to exercise any function of government) at least once every two fiscal years. In conducting the audit, inquiry must be made into the methods, accuracy, and legality of the accounts, financial reports, records, files, and reports of the office, whether the laws, rules, ordinances, and orders applying to the office have been observed, and whether the requirements and rules of the Auditor of State have been complied with. The audit must cover at least one fiscal year unless it is a biennial audit. In the case of the biennial audit, it must cover both fiscal years. Annual and special audits must be paid for by the state agency being audited; biennial audits are paid from appropriations made to the Department of Administrative Services for that purpose.

Under the act, the Authority is declared to be a state agency and, as such, is subject to the audit requirements. The act, however, makes further specifications regarding the audits to be conducted. First, the Auditor of State is required to audit the Authority each fiscal year, instead of biennially. Second, the Auditor may engage an independent certified public accountant to conduct the audit. If such an accountant is engaged, he or she must, to the extent practicable, utilize the services of the uniform accounting network established by the Auditor.[260] Finally, the costs of the annual audit are payable as may be provided in the bond proceedings from the proceeds of the obligations issued, from special funds, or from other moneys available for the purpose, including as to future financing costs, from the pledged receipts. Additionally, the act requires the Authority to

[260] Continuing law requires the Auditor of State to establish and maintain a uniform and compatible computerized financial management and accounting system designed to provide public offices, other than state agencies and the Ohio Education Computer Network and public school districts, with efficient and economical access to data processing and management information facilities and expertise. (R.C. 117.101, not in the act.)

prepare annually an operating and financial statement covering the Authority's operations for the preceding fiscal year.

Terms of the assignment and sale

(R.C. 183.51(B))

Any assignment and sale under the act is irrevocable in accordance with its terms during the period any obligations secured by amounts so assigned and sold are outstanding under the applicable bond proceedings, and constitutes a contractual obligation to the holders or owners of those obligations. Any such assignment and sale is to be treated as "an absolute transfer and true sale for all purposes," and not as a pledge or other security interest. Once the assignment and sale occur, all of the following apply:

(1) The state does not have any right, title, or interest in the portion of the receipts under the TMSA so assigned and sold, other than any residual interest that may be described in the bond proceedings for those obligations;

(2) The assigned and sold portion (a) is the property of the Authority and not of the state, (b) must be paid directly to the Authority, and (c) is to be owned, received, held, and disbursed by the Authority and not by the state;

(3) The state may covenant in the bond proceedings, with and for the benefit of the Authority, the holders and owners of obligations, and providers of any credit enhancement facilities, that it will (a) maintain statutory authority for, and cause to be collected and paid directly to the Authority or its assignee, the pledged receipts, (b) enforce the rights of the Authority to receive the receipts under the TMSA assigned and sold to the Authority, (c) not materially impair the rights of the Authority to fulfill the terms of its agreements with the holders or owners of outstanding obligations under the bond proceedings, (d) not materially impair the rights and remedies of the holders or owners of outstanding obligations or materially impair the security for those outstanding obligations, and (e) enforce Chapter 1346. of the Revised Code (regarding escrow accounts for those tobacco product manufacturers that are not "participating manufacturers" under the TMSA), the TMSA, and the consent decree to effectuate the collection of the pledged tobacco settlement receipts.[261] The bond proceedings may provide or authorize the manner for determining material impairment of the security for any

[261] The expenses of this enforcement activity of the Attorney General must be paid from the TMSA amounts assigned and sold to the Authority or from the proceeds of obligations. Payment may be by both annual payments and a special fund providing reserve amounts. (R.C. 183.51(H).)

outstanding obligations, including by assessing and evaluating the pledged receipts in the aggregate.

The Governor and the Director of Budget and Management, in consultation with the Attorney General (on behalf of the state), and any member or officer of the Authority as authorized by the Authority (on behalf of the Authority), may take any action and execute any documents necessary to effect the assignment and sale and the acceptance of the assignment and title to the receipts.

Lastly, nothing in the act or the bond proceedings can be construed to preclude or limit the state from (1) regulating, or authorizing or permitting the regulation of, smoking, (2) taxing and regulating the sale of cigarettes or other tobacco products, or (3) defending or prosecuting cases or other actions relating to the sale or use of cigarettes or other tobacco products.

Purpose of the obligations

(R.C. 183.51(A)(11), (C), and (D))

Under the act, "**obligations**" means bonds, notes, or other evidences of obligation of the Authority that are issued by the Authority under the act and Section 2i, Article VIII of the Ohio Constitution, for the purpose of providing funds to the state--in exchange for the assignment and sale described above--to pay costs of capital facilities for (1) housing branches and agencies of state government but limited to facilities for a system of common schools throughout the state, and (2) state-supported or state-assisted institutions of higher education.

At least 75% of the aggregate net proceeds of the obligations issued, exclusive of those issued to refund, renew, or advance refund other obligations, must be paid to the state for deposit into the School Building Program Assistance Fund created under continuing law.[262] The remaining amounts of the proceeds (except as otherwise provided in the bond proceedings) are to be deposited into the state treasury to the credit of the Higher Education Improvement Fund. The proceeds deposited in the School Building Program Assistance Fund, in addition to paying the state's costs of other School Facilities Commission programs, may be used to pay the basic project costs of school districts under the Accelerated Urban Program at times determined by the Commission without regard to whether those expenditures are in proportion to the state's and the district's respective shares of that basic project cost.[263] That use of those funds, however, cannot result in any

[262] See R.C. 3318.25.

[263] Under the Classroom Facilities Law, "basic project cost" is the cost of a district's classroom facilities construction or renovation project and is based on an assessment of the district's needs conducted by the School Facilities Commission compared with

change in the state or the school district shares of the basic project costs provided under the Ohio Classroom Facilities Law.

The act also provides that, in addition to the investments authorized under Ohio's Uniform Depository Act, the net proceeds of the obligations deposited into the School Building Program Assistance Fund and the Higher Education Improvement Fund may be invested by the Treasurer of State in guaranteed investment contracts with providers rated at the time of any investment in the three highest rating categories by two nationally recognized rating agencies, all subject to the terms and conditions in those agreements or the bond proceedings.

Issuance and sale of obligations

(R.C. 183.51(C) to (E))

Each issue of obligations must be authorized by resolution or order of the Authority. The aggregate principal amount of obligations issued under the act cannot exceed $6 billion (exclusive of obligations issued to refund, renew, or advance refund other obligations issued or incurred). Unless otherwise provided by law, the latest principal maturity may not be later than the earlier of December 31 of (1) the 50th calendar year after the year of issuance of the particular obligations or (2) the 50th calendar year after the year in which the original obligation to pay was issued or entered into.

The act permits the Authority--without the need for any other approval--to appoint paying agents, bond registrars, securities depositories, credit enhancement providers or counterparties, clearing corporations, and transfer agents, and to retain the services of underwriters, investment bankers, financial advisers, accounting experts, marketing, remarketing, indexing, and administrative agents, other consultants, and independent contractors as are necessary in the Authority's judgment. The Attorney General--as counsel to the Authority--is required to represent the Authority in the execution of its powers and duties and to institute and prosecute all actions on its behalf. After consultation with the Authority, the Attorney General is to appoint counsel selected by the Authority for the purposes

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specifications established in the Commission's design manual. This cost is split into a state and school district share based upon its wealth ranking under the Classroom Facilities Assistance Program (CFAP). R.C. 3318.01 to 3318.20 [not amended by provisions of the act permitting securitization of TMSA payments].

The "Accelerated Urban Program" applies only to the Akron, Dayton, Cincinnati, Cleveland, Columbus, and Toledo school districts and enables them to begin receiving state funds generally in the same manner as under CFAP, but earlier than otherwise permitted under CFAP. (R.C. 3318.38, not in the act.)

of carrying out the functions specified by the act. Financing costs are payable, as may be provided in the bond proceedings, from the proceeds of the obligations, from special funds, or from other moneys available for the purpose.

Quarterly reports of improvement fund activity

(R.C. 183.51(U))

Under the act, the proceeds from the issuance of the obligations securitized by the TMSA payments are to be paid to the state for deposit into the applicable "**improvement fund**." That term is defined by the act to mean the School Building Program Assistance Fund and the Higher Education Improvement Fund. (These funds are used to pay for the capital facilities described above under "***Purposes of the obligations***.") The act requires the Authority to make quarterly reports to the General Assembly of the amounts in, and activities of, each improvement fund, including amounts and activities on the subfund level. Each report must include a detailed description and analysis of the amount of proceeds remaining in each fund from the sale of the obligations and any other deposits, credits, interest earnings, disbursements, expenses, transfers, or activities of each fund.

State debt limitation

(R.C. 126.16)

The Governor vetoed a provision of the act that would have provided that, when computing the state debt limitation under Article VIII, Section 17 of the Ohio Constitution, any avoided obligations were to be considered as having been issued.[264] "Avoided obligations" were defined under the vetoed provisions as the direct obligations of the state that have not been issued because the capital facilities they would have financed are instead paid for with the proceeds of obligations issued by the Authority under the act. The fiscal year amounts that would have been required to be applied or set aside for payment of debt service over the maximum period of maturity of the avoided obligations had those obligations been issued were to be included in the computations.

[264] The constitutional limitation governs the amount of new debt the state can take on in a fiscal year. Under the limitation, state bonds or other obligations cannot be issued if the total amount of debt service payments (that is, principal and interest) that must be made in any future fiscal year from the GRF and net state lottery proceeds would exceed 5% of the total estimated GRF and net state lottery proceeds revenue during the fiscal year of issuance.

Dissolution of the Authority

(R.C. 183.51(B))

The act provides that--no later than two years following the date on which there are no longer any obligations outstanding under the bond proceedings--all assets of the Authority are to vest in the state, the Authority is to execute any necessary assignments or instruments, including any assignment of any right to receive, title to, or ownership of amounts under the TMSA, and the Authority is to be dissolved.

Bond trustee's principal place of business

(R.C. 151.40, 164.09, 166.08, 1555.08, 1557.03, 3318.26, 5528.54, and 5531.10)

Continuing law expressly provides that certain state bonds and other obligations may be secured by a trust agreement between the state and a corporate trustee. Under former law, the trustee could be any trust company or bank having *its principal place* of business in Ohio. The act instead requires that the corporate trustee have *a place* of business in Ohio. This change applies to the following categories of bonds:

--Obligations issued by the Treasurer of State for school building program assistance before December 1, 1999, for the Public Works Commission's local government infrastructure program before September 30, 2000, and for the Clean Ohio Revitalization Program, the Department of Development's Facilities Establishment Fund and related economic development assistance programs, and the Department of Transportation's State Infrastructure Bank.

--Obligations issued by the Commissioners of the Sinking Fund before September 30, 2000, for coal research and development, parks and natural resources, and highway capital improvements.

Ordinary mail notice in adjudications under the Administrative Procedure Act

(R.C. 119.07)

Under the Administrative Procedure Act, administrative agencies conduct adjudications and issue orders pertaining to the legal rights and obligations of parties who are subject to the authority of the agency. For example, a licensing board will conduct an adjudication when considering disciplinary action against a licensee. An adjudication order generally is not valid unless the party who is the subject of the order has been afforded an opportunity for a hearing. Similarly, if the notice provisions are not followed as provided by law, any order entered in an adjudication is invalid. Accordingly, administrative agencies generally are

required to send notices in adjudications to parties by registered mail. When those notices are returned for a failure of delivery, the agency must either serve the party by personal service or publish notice in a newspaper of general circulation once a week for three consecutive weeks in the county of the party's last known place of residence or business.

The act distinguishes a "refusal of delivery" from a "failure of delivery" and affords different procedural requirements for providing notice by a secondary means. The act provides a less costly means of serving notice after a primary notice sent by registered mail is returned because the party fails to claim the notice (i.e. "refusal of delivery"). Under the act, in the case of a refusal of delivery a secondary notice must be sent by ordinary mail to the party at the party's last known address and the administrative agency sending the notice must obtain a certificate of mailing. Service by ordinary mail is complete when the certificate of mailing is obtained unless the notice is returned showing failure of delivery.

If any notice sent by registered or ordinary mail is returned showing failure of delivery, the agency must accomplish service of notice under the continuing requirement of either personal service or newspaper publication. When personal service is used, an employee or agent of the agency may make personal service on the party. If newspaper publication is used, only a summary of the substantive provisions of the notice must be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. And, when notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, must be mailed by ordinary mail to the party at the party's last known address; and, as under continuing law, the notice is deemed received as of the date of the last publication.

The act authorizes an employee or agent of an agency to make personal delivery of a notice upon a party at any time.

Refusal of delivery by personal service or by mail is not failure of delivery and service is considered to be complete.

A failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired. A party's last known address is the mailing address of the party appearing in the records of the agency.

Void public contracts in which public official has unlawful interest

Having an unlawful interest in a public contract

(R.C. 2921.42)

Continuing law. With certain exceptions, continuing law prohibits any public official from knowingly doing any of the following:

(1) Authorizing, or employing the authority or influence of the public official's office to secure authorization of any public contract in which the official, a member of the official's family, or any of the official's business associates has an interest;

(2) Authorizing, or employing the authority or influence of the public official's office to secure the investment of public funds in any share, bond, mortgage, or other security, with respect to which the official, a member of the official's family, or any of the official's business associates either has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees;

(3) During the public official's term of office or within one year thereafter, occupying any position of profit in the prosecution of a public contract authorized by the official or by a legislative body, commission, or board of which the official was a member at the time of authorization, unless the contract was let by competitive bidding to the lowest and best bidder;

(4) Having an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected;

(5) Having an interest in the profits or benefits of a public contract that is not let by competitive bidding if required by law and that involves more than $150.

A violation of any of the above prohibitions is the offense of having an unlawful interest in a public contract.

In the absence of bribery or a purpose to defraud, a public official, member of the official's family, or any of the official's business associates is not considered as having an interest in a public contract or the investment of public funds, if specified circumstances with respect to the person's ownership of shares of or relationship to the corporation or organization apply. The above prohibitions do not apply to: (a) a public contract in which a public official, member of the official's family, or one of the official's business associates has an interest, if the subject of the public contract is necessary supplies or services for the political

subdivision or governmental agency or instrumentality involved and other specified criteria apply, or (b) a public contract in which a township trustee in a township with a population of 5,000 or less in its unincorporated area, a member of the township trustee's family, or one of the trustee's business associates has an interest, if the subject of the public contract is necessary supplies or services for the township, the amount of the contract is less than $5,000 per year, and other specified criteria apply.

"Public contract" means: (a) the purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of its political subdivisions, or any agency or instrumentality of either, or (b) a contract for the design, construction, alteration, repair, or maintenance of any public property.

Operation of the act. The act provides that any public contract in which a public official, a member of the public official's family, or any of the public official's business associates has an interest in violation of any of the prohibitions described above in "***Continuing law***" is void and unenforceable. It further provides that any contract securing the investment of public funds in which a public official, a member of the public official's family, or any of the public official's business associates has an interest, is an underwriter, or receives any brokerage, origination, or servicing fees and that was entered into in violation of the law's prohibition (see paragraph (2) under "***Continuing law***," above) is void and unenforceable.

Contract of regional airport authority

(R.C. 308.04)

Under continuing law, the board of trustees for a regional airport authority is appointed as provided in the resolution creating airport authority. Each member of the board of trustees, before entering upon the member's official duties, must take and subscribe to an oath or affirmation that the member will honestly, faithfully, and impartially perform the duties of office, and that the member will not be interested directly or indirectly in any contract let by the regional airport authority.

The act provides that any contract let by the regional airport authority in which a member of the board of trustees is directly or indirectly interested is void and unenforceable.

Supreme Court case

In *Morrow Cty. Airport Authority v. Whetstone Flyers, Ltd.* (2007), 112 Ohio St.3d 419, the Ohio Supreme Court held that in the absence of a statutory provision to the contrary, the contract in question was not void even though it was entered into in violation of R.C. 308.04 and 2921.42(A)(1).

Residential rental property information

Filing of information with county auditor

(R.C. 5323.02)

Law largely unchanged by the act requires an owner of residential rental property to file with the county auditor of the county in which the property is located the following information:

(1) The name, address, and telephone number of the owner;

(2) If the residential rental property is owned by a trust, business trust, estate, partnership, limited partnership, limited liability company, association, corporation, or any other business entity, the name, address, and telephone number of the following:

(a) A trustee, in the case of a trust or business trust;

(b) The executor or administrator, in the case of an estate;

(c) A general partner, in the case of a partnership or a limited partnership;

(d) A member, manager, or officer, in the case of a limited liability company;

(e) An associate, in the case of an association;

(f) An officer, in the case of a corporation;

(g) A member, manager, or officer, in the case of any other business entity.

(3) The street address and permanent parcel number of the residential rental property;

(4) If the residential rental property has dwelling units that are leased or otherwise rented to tenants, the year the units were built.

The act removes (4) above from the list of required information that an owner of residential rental property must file with the county auditor (R.C. 5323.02(A)(4)).

Under former law, the information described above was required to be filed and maintained in a manner to be determined by the county auditor. The act requires that the information be filed and maintained on the tax list or the real property record.

Former law also required an owner of residential rental property to update the information described above within ten days after any change in the information occurs. The act requires the information to be updated within 60 days.

The act requires the county auditor to provide an owner of residential rental property located in a county that has a population of more than 200,000 according to the most recent decennial census with notice pursuant to R.C. 323.131(B) of the requirement to file the information described above and the requirement to update that information. The act also requires the owner of residential rental property to comply with the requirements described above within 60 days after receiving the notice described above, or the notice provided under R.C. 319.202(D) or R.C. 323.131(B).

Penalty

Former law prohibited an owner of residential rental property from failing to comply with the filing or updating of information requirements described above or from failing to satisfy the designation of agent requirement or the filing of the appropriate designation of agent document requirement of R.C. 5323.03. A violation of this prohibition is a minor misdemeanor under existing law. The act eliminates this criminal penalty and instead allows the county auditor to impose upon any person who violates these prohibitions a special assessment on the residential rental property that is the subject of the violation that is not less than $50 or more than $150. That special assessment may be appealed to the county board of revision.

Definitions

Continuing law defines "political subdivision," for the purposes of R.C. Chapter 5323., as a county, township, municipal corporation, or other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state. The act modifies this definition by providing that it means a county *that has a population of more than 200,000 according to the most recent decennial census or a* township, municipal corporation, or other body

corporate and politic that is *located in a county that has a population of more than 200,000 according to the most recent decennial census and is* responsible for government activities in a geographic area smaller than that of the state.

Continuing law also defines "residential rental property" as real property on which is located one or more dwelling units leased or otherwise rented to tenants solely for residential purposes, or a mobile home park or other permanent or semi permanent site at which lots are leased or otherwise rented to tenants for the parking of a manufactured home, mobile home, or recreational vehicle that is used solely for residential purposes. The act modifies the definition to limit the real property that is covered by the definition to real property located in a county that has a population of more than 200,000 according to the most recent decennial census.

Nutrition and Physical Fitness Month

(R.C. 5.2235; Sections 737.20 and 737.21)

The act designates May as Nutrition and Physical Fitness Month to increase public awareness of the paramount roles that nutrition and physical fitness play in promoting a healthy lifestyle for all of Ohio's citizens.

It states that, by making this designation, the members of the General Assembly:

- Call on the people of Ohio to recognize the important role that a nutritious diet plays in their health and well-being;

- Are aware that, according to the United States Department of Health and Human Services, dietary changes could reduce cancer deaths in the United States by as much as 35%; that only 25% of American adults eat the recommended servings of fruits and vegetables each day; and that more than 60% of young Americans eat too much fat and less than 20% eat the recommended servings of fruits and vegetables; and

- Encourage all Ohioans to review both the United States Department of Health and Human Services' "Dietary Guidelines for Americans" and the United States Department of Agriculture's food pyramid recommendations and to work toward developing a nutritious lifestyle.

The members of the General Assembly also:

- Call on the people of Ohio to make daily exercise a priority;

- Are aware that, according to the United States Center for Disease Control and Prevention, 26% of all Ohioans report no leisure time or physical activity and 60% of Ohioans are overweight or obese, which is the 13th highest level in the United States; and

- Encourage individuals, community organizations, local governments, and schools, when holding celebrations, to include physical and athletic activities and to work toward the goal of a state whose citizens are healthy, active, and physically fit.

Land conveyance to Columbus

(Section 753.30)

The act authorizes the Governor to execute a deed in the name of the state conveying to the city of Columbus, and its successors and assigns, all of the state's right, title, and interest in approximately 13 acres of real estate in Franklin Township of Franklin County, together with perpetual easements of access over certain existing or future driveways. The real estate is part of or near the former Training Institution of Central Ohio (TICO). Consideration for the conveyance is the purchase price of $194,955. The state may require additional consideration for any perpetual easement needed by the city of Columbus to access the real estate, at a price mutually agreed upon between the city of Columbus and the state. (Divisions (A) and (B).)

The conveyance is conditioned on the city of Columbus, and its successors and assigns, receiving written approval from the state to use or develop the real estate for any purpose other than a police heliport or uses or developments incident thereto. Furthermore, the conveyance is conditioned on the city of Columbus giving the state the right to re-purchase the real estate prior to selling, conveying, or transferring ownership of the real estate, at a price not less than fair market value as appraised by a disinterested party. Finally, the conveyance is subject to the conditions and restrictions that have been determined necessary by the Director of Administrative Services to assure there is no interference with state uses of state-owned real estate that adjoins the real estate conveyed. (Division (C).)

Upon payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate. The deed must be executed by the Governor in the name of the state, be countersigned by the Secretary of State, be sealed with the Great Seal of the State, be presented for recording in the Office of the Auditor of State, and be delivered to the city of Columbus. The city of Columbus must record the deed in the Franklin County

Recorder's office. The city of Columbus must pay the costs of the conveyance. (Divisions (D) and (E).)

The authority to make the conveyance expires one year after its effective date (Division (F)).

Conveyance to Celina

(Section 753.40)

The act authorizes the Governor to execute a deed in the name of the state conveying to the city of Celina the state's right of reverter retained in the conveyance authorized in Am. H.B. 823 of the 112th General Assembly. The parcel of land affected is situated in the city of Celina, Jefferson Township, Mercer County. The act specifies that the state retains its right of reverter for the remainder of the real estate conveyed pursuant to that act. Consideration for conveyance of the right of reverter is the mutual benefit accruing to the state and to the city of Celina from the reconfiguration of the entrance to the city park located on the real estate conveyed in that act.

The Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate conveying the right of reverter. The deed must state the consideration. The deed must be executed by the Governor, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the office of the Auditor of State for recording, and delivered to the city of Celina. The city of Celina must present the deed for recording in the office of the Mercer County Recorder. The authority to make the conveyance expires four years after its effective date.

Release of reversionary interests to Dairy Barn Southeastern Ohio's Cultural Arts Center, Inc.

(Section 753.50)

The act authorizes the Governor to execute releases in the name of the state releasing to Dairy Barn Southeastern Ohio's Cultural Arts Center, Inc., the state's reversionary interests that were retained in the conveyances authorized by Am. H.B. 552 of the 113th General Assembly and by Am. H.B. 385 of the 116th General Assembly. The act finds that releasing the reversionary interests will remove impediments to financing of improvements to continue cultural arts programs.

The Department of Administrative Services, with the assistance of the Attorney General, must prepare the releases. The releases must be executed by the Governor and presented in the office of the Auditor of State for recording. The

Dairy Barn Southeastern Ohio's Cultural Arts Center, Inc., must present the releases for recording in the office of the Athens County Recorder. The authority to execute the releases expires one year after its effective date.

NOTE ON EFFECTIVE DATES

(Sections 809.03 to 821.21)

Section 1d, 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 of 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 act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a *codified* section in the act is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act also includes many exceptions to the default provision, which provide that specified codified provisions are not subject to the referendum and go into immediate effect.

The act 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 act, 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 act also specifies that an item that composes the whole or part of an uncodified section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2009, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE
Introduced	03-20-07
Reported, H. Finance & Appropriations	05-01-07
Passed House (97-0)	05-01-07
Reported, S. Finance & Financial Institutions	06-12-07
Passed Senate (33-0)	06-13-07
House refused to concur in Senate amendments (46-53)	06-19-07
Senate requested conference committee	06-19-07
House acceded to request for conference committee	06-20-07
House agreed to conference committee report (96-1)	06-27-07
Senate agreed to conference committee report (33-0)	06-27-07

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