



# Ohio Legislative Service Commission

## Final Analysis

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### **Am. Sub. S.B. 181** 128th General Assembly (As Passed by the General Assembly)

**Sens.** Stewart, Goodman, Schaffer, Seitz, Niehaus, Faber, Gibbs, Gillmor, Harris, Hughes, Patton, Wagoner, Wilson, Carey

**Reps.** Weddington, Boyd, DeBose, Domenick, Driehaus, Evans, Garland, Hagan, Letson, Luckie, Mallory, Reece, Sayre, B. Williams, S. Williams, Winburn, Yuko

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## ACT SUMMARY

- Grants an eligible landowner or nonprofit organization qualified immunity from liability for: (1) injury or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management in the Department of Natural Resources while the person is within a reclamation project work area or by a third party that arises out of or occurs as a result of an act or omission of the Division during the construction, operation, and maintenance of the reclamation project, (2) any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division, or (3) generally the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project.
- Requires an eligible landowner to notify the Division of a known, latent, dangerous condition at a reclamation project work area that is not the subject of the reclamation project, and provides that the immunity does not apply to an eligible landowner if the landowner fails to notify the Division.
- Provides that the immunity does not apply to an eligible landowner or nonprofit organization if an eligible landowner or nonprofit organization engages in unlawful activities with respect to a reclamation project or an injury to a person within the reclamation work area results from an eligible landowner's or nonprofit organization's reckless acts or omissions, gross negligence, or willful or wanton misconduct.

- Designates that methane gas emitted from an abandoned coal mine constitutes a renewable energy resource rather than an advanced energy resource for purposes of the law governing the promotion of renewable energy usage.
- Reestablishes the Ohio Natural Areas Council and specifies its duties.
- Authorizes the transfer of money from the Natural Areas and Preserves Fund to the Departmental Projects Fund for the purpose of paying the salaries of permanent employees of the Division of Natural Areas and Preserves through January 1, 2012.
- Provides for the transfer of a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund for the purposes of administering and enforcing the Coal Mining Law.
- Expands the uses for which money in the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund and money in the Water Pollution Control Loan Fund may be used.
- Authorizes the Tax Commissioner to refund commercial activity tax paid by a business that doesn't owe any tax (without a CAT liability) regardless of the business's registration status.
- Authorizes a taxpayer and the Tax Commissioner to agree to extend the four-year CAT assessment and refund statute of limitations.
- Modifies the tax exemption applicable to property owned by or leased to a board of education.
- Provides a property tax exemption for a new convention center located in a county with a population exceeding 1.2 million, and exempts construction materials incorporated into such a convention center from sales and use taxation until one year after construction of the convention center is completed.
- Alters the Treasurer of State's authority to invest interim funds of the state in single-issuer debt.
- Extends the time (from October 15, 2010, to October 15, 2011) during which local governments may enter into enterprise zone agreements.
- Adds new sporting events to the list of qualifying events for which local governments can receive state grants for hosting.

- Applies agricultural commodity testing requirements and procedures under the Agricultural Commodity Handlers Law to a depositor or depositor's agent rather than to a producer or producer's agent.
- Authorizes a regional water and sewer district or a regional transit authority to offer up to two additional deferred compensation programs for employees.
- Revises the requirement to lower the excellent or effective rating of a school district or building that fails to make adequate yearly progress (AYP) for three or more consecutive years, by specifying (1) that the failure must involve two or more of the same student subgroups each year and (2) that an excellent rating may be lowered only one level, to effective (instead of two levels, to continuous improvement, as in prior law).
- Repeals the prohibition against lowering a district's or building's performance rating from the previous year based solely on one subgroup not making AYP.
- Makes appropriations for the Job Ready Site and Clean Ohio programs.
- Makes changes to appropriations for primary and secondary education to ensure compliance with the State Fiscal Stabilization Fund requirements for fiscal year 2010 under the federal American Recovery and Reinvestment Act.
- Makes additional appropriations, including appropriations for chartered nonpublic schools; the operating expenses of the Casino Control Commission; the casino-related duties of the Inspector General and the Ohio Ethics Commission; the operation of the Co-Op/Internship Program by the Chancellor of the Ohio Board of Regents; and a work force development pilot program to be developed by the Chancellor for areas of the state with high unemployment (PARTIALLY VETOED).

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## CONTENT AND OPERATION

### Immunity from liability of eligible landowner in relation to reclamation project

(R.C. 1513.372)

The act provides that, with certain exceptions described below, an "eligible landowner" or "nonprofit organization" is immune from liability as follows (terms in quotation marks are defined in "**Definitions**," below):

(1) For any injury to or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management while the person is within the "reclamation project work area";

(2) For any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of the Division during the construction, operation, and maintenance of the "reclamation project";

(3) For any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division;

(4) For the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project unless the eligible landowner negligently damages or destroys the acid mine drainage abatement

facility or denies access to the Division of Mineral Resources Management that is responsible for the operation, maintenance, or repair of the acid mine drainage abatement facility.

### **Notification of dangerous condition; exceptions to immunity**

The act requires the eligible landowner to notify the Division of a known, latent, dangerous condition located at a reclamation project work area that is not the subject of the reclamation project. The immunity of an eligible landowner provided by the act does not apply to any injury, damage, or pollution (see **COMMENT 1**) resulting from the landowner's failure to notify the Division of such a known, latent, dangerous condition.

The immunity additionally does not apply to an eligible landowner or nonprofit organization in both of the following circumstances:

(1) An injury to a person within the reclamation project work area that results from an eligible landowner's or nonprofit organization's acts or omissions that are reckless or constitute gross negligence or willful or wanton misconduct;

(2) An eligible landowner or nonprofit organization who engages in any unlawful activities with respect to a reclamation project.

### **Rules**

The act requires the Chief of the Division of Mineral Resources Management to adopt rules in accordance with the Administrative Procedure Act that are necessary to implement the act's provisions.

### **Definitions**

The act defines the following terms for purposes of these immunity provisions:

"Abandoned mine land" means land or water resources adversely affected by coal mining practices to which one of the following applies:

(1) The coal mining practices occurred prior to August 3, 1977, and there is no continuing reclamation responsibility under state or federal law;

(2) The coal mining practices occurred prior to April 10, 1972; or

(3) The coal mining practices were conducted pursuant to a license that was issued prior to April 10, 1972.

"Eligible landowner" means a landowner who provides access without charge or other consideration to "abandoned mine land" that is located on the landowner's

property for the purpose of allowing the implementation of a reclamation project on the abandoned mine land. "Eligible landowner" does not include a person that is responsible under state or federal law to reclaim the land or address acid mine drainage existing or emanating from the abandoned mine land. (See **COMMENT 2**.)

"Landowner" means a person who holds a fee interest in real property.

"Nonprofit organization" means a corporation, association, group, institution, society, or other organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, that provides funding or services at no cost or at cost for a reclamation project.

"Reclamation project" means an acid mine drainage abatement project that is conducted in compliance with the Coal Surface Mining Law, and rules adopted under it, on abandoned mine land that is located on property owned by an eligible landowner.

"Reclamation project work area" means the portion of a parcel of real property on which a reclamation project is conducted and the roads providing ingress to and egress from the reclamation project.

## **Designation of methane gas as a renewable energy source**

(R.C. 4928.01)

Ongoing law promotes advanced energy usage and electricity supplies from advanced energy resources. Prior law defined "advanced energy resource" to include methane gas emitted from an operating or abandoned coal mine. The act removes such methane gas from the definition. The act instead includes "methane gas emitted from an abandoned coal mine" in the definition of "renewable energy resource" for purposes of ongoing law, which are to promote renewable energy usage, electricity supplies from renewable energy resources, and renewable energy credits.

## **Natural Areas and Preserves**

### **Ohio Natural Areas Council**

(R.C. 1501.04, 1517.03, 1517.04, and 1517.23)

The act recreates the Ohio Natural Areas Council, which was abolished in 2004. The Council is to advise the Chief of the Division of Natural Areas and Preserves in the Department of Natural Resources on the administration of nature preserves and the preservation of natural areas.

The Council must have no fewer than five members as determined by the Director of Natural Resources, and the members must be appointed by the Director. Not more than 30 days after the effective date of this portion of the act, the Director must make initial appointments to the Council. The Director also must establish the members' terms of office.

The Council annually must select from among its members a chairperson and a secretary. Members are to receive no compensation and cannot be reimbursed for expenses incurred as members of the Council.

The Council must hold at least one regular meeting in each calendar year. Special meetings may be called by the chairperson and must be called by the chairperson upon written request by two or more members of the Council. A written notice of the time and place of each meeting must be sent to each member and to the Director. A majority of the members constitutes a quorum. The Council must keep a record of its proceedings at each meeting and must send a copy of the record to the Director. Additionally, the record must be open to the public for inspection.

The act requires the Council to do all of the following:

- (1) Review and make recommendations regarding criteria used by the Department for acquisition and dedication of nature preserves;
- (2) Review and make recommendations regarding inventories and registries of natural areas and preserves;
- (3) Review and make recommendations regarding departmental plans for the selection of particular natural areas for state acquisition;
- (4) Advise the Chief on policies and rules governing the management, protection, and use of nature preserves;
- (5) Recommend the extent and type of visitation and use to be permitted within each nature preserve;
- (6) Advise and consult with the Chief and with employees of the Division on preservation matters; and
- (7) Advise the Chief on the program to identify and protect the state's cave resources that is established under ongoing law.

Finally, the act requires the Council's chairperson to serve on the Recreation and Resources Commission created by ongoing law in the Department.

## **Transfer of money to Departmental Projects Fund**

(Section 3)

Under the act, beginning July 1, 2010, and ending January 1, 2012, the Director of Budget and Management, upon the request of the Director of Natural Resources, must transfer an amount not to exceed \$1.2 million from the Natural Areas and Preserves Fund to the Departmental Projects Fund for the purpose of paying the salaries of permanent employees of the Division of Natural Areas and Preserves through January 1, 2012. If such an amount is so transferred, the Director of Natural Resources, not later than March 1, 2011, must submit to the Speaker of the House of Representatives and the President of the Senate a detailed report of expenditures from the Departmental Projects Fund for payment of salaries of permanent employees of that Division.

## **Transfer of money from Coal-Workers Pneumoconiosis Fund to Strip Mining Administration Fund**

(Section 4)

Under the act, beginning July 1, 2010, and ending December 31, 2010, the Administrator of the Bureau of Workers' Compensation must transfer a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund in an amount not to exceed \$2.28 million to the Strip Mining Administration Fund for the purposes of administering and enforcing the Coal Mining Law. The act states that transfers from the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund are prohibited after December 31, 2010.

## **Additional purposes for expenditures from Water Supply Revolving Loan Account in Drinking Water Assistance Fund and from Water Pollution Control Loan Fund**

(R.C. 6109.22 and 6111.036)

Ongoing law specifies the purposes for which money in the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund, created in the Safe Drinking Water Law, may be used. One of the specified uses is to provide assistance authorized by the federal Safe Drinking Water Act. The act adds that expenditures may be made to provide assistance authorized by any other federal law related to the use of federal funds administered under that Act.

Ongoing law also specifies the purposes for which money in the Water Pollution Control Loan Fund, created in the Water Pollution Control Law, may be used. The act adds that money in the Fund may be used to provide assistance in any manner or for



any purpose that is consistent with Title VI of the Federal Water Pollution Control Act or with any other federal law related to the use of federal funds administered under Title VI of that Act.

## **Commercial activity tax (CAT)**

### **Refunds**

(R.C. 5751.08(E); Section 6)

Under ongoing law, businesses with annual gross receipts of less than \$150,000 are not required to register for or pay commercial activity tax. Businesses with gross receipts between \$150,000 and \$1 million must pay the minimum tax of \$150.

The act enables a business that paid the \$150 minimum CAT unnecessarily to receive a refund even if it failed to cancel its CAT registration on time. Under prior law, if a business did not cancel its registration by May 10, the date the return is due, the Tax Commissioner was not authorized to issue a refund.

The act also authorizes refunds of the annual minimum commercial activity tax paid for 2007, 2008, or 2009, if the business erroneously registered for the tax and failed to cancel the registration before February 10 of the calendar year for which the tax was paid.

### **Statute of limitations**

(R.C. 5751.08(A) and 5751.09(F))

Ongoing law provides a four-year statute of limitations within which the Tax Commissioner must issue assessments or refunds for the CAT. (The limit does not apply if no return is filed or if a return is fraudulent.)

The act expressly authorizes a taxpayer and the Tax Commissioner to agree to extend the four-year limitation period. Such agreements are authorized under ongoing law for other taxes such as the personal income, sales and use, and corporation franchise taxes.

## **Tax exemption for school property**

(R.C. 3313.44; Section 5)

Prior law exempted from taxation all real or personal property "vested in" any board of education. The property was also exempt from sale on execution or other writ or order in the nature of an execution.



The act instead provides that any real or personal property "owned by or leased to" a board of education, where the lease term is at least 50 years, is exempt from taxation. The act states that its amendments to this provision are remedial in nature and apply to tax years and property at issue in any application for exemption from taxation pending before the Tax Commissioner, Ohio Board of Tax Appeals, any Court of Appeals, or the Ohio Supreme Court on the act's effective date.

## **Convention centers**

### **Property tax exemption**

(R.C. 5709.084)

Ongoing law allows the board of county commissioners in a county with a population exceeding 1.2 million to purchase, lease, or construct a convention center. Alternatively, the board may enter into an agreement with a county convention and visitors' bureau under which the bureau agrees to construct a convention center with revenue from a lodging tax that the board levies for that purpose. (R.C. 307.695(B) and (F), not in the act.)

The act authorizes a real and personal property tax exemption for a convention center located in a county with a population exceeding 1.2 million if:

(1) The convention center is constructed, or the personal property comprising the convention center is acquired, after January 1, 2010; and

(2) The convention center, or the land upon which the convention center is located, is owned or leased by the county.

The population of a county is determined for purposes of the exemption by reference to the most recent federal decennial census at the time construction of the convention center commences. The act defines commencement of construction as the earlier of (1) the issuance of debt to finance the convention center, (2) the demolition of existing structures on the site, or (3) grading of the site in preparation for construction.<sup>1</sup>

### **Sales tax exemption**

(R.C. 5739.02(B)(13))

Under ongoing law, sales and use taxes apply to contractor purchases of building materials, unless the materials are purchased for incorporation into a structure or

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<sup>1</sup> According to the 2000 census, Cuyahoga County is the only Ohio county that satisfies the population threshold.

improvement under a construction contract with a government entity or are for incorporation into certain kinds of real property, including government-owned property, agricultural property, property owned by a church or charitable organization, certain sports facilities, and property in a different state if the materials would be exempt from sales tax in that state.

The act additionally exempts construction materials and services sold to a contractor for incorporation into a convention center from sales and use taxation, if the convention center qualifies for property tax exemption as described immediately above. This exemption expires one year after construction of the convention center is completed.

### **State investments in single-issue foreign debt**

(R.C. 135.143)

Under ongoing law, the Treasurer of State may invest or execute transactions for interim funds of the state in a variety of obligations, including U.S. treasury bills, bonds, certificates of deposit, various qualified forms of commercial paper issued by corporations that are incorporated under United States or state law, and qualified debt interests other than the foregoing commercial paper. Regarding investment in qualified debt interests, the law places limitations on the aggregate amount the Treasurer may invest. The total investment must not exceed 25% of the state's total average portfolio (as determined by the Treasurer). Also, the investments in those debt interests issued by foreign nations must not exceed 1% of the state's total average portfolio and the interests must be backed by the full faith and credit of that nation. Finally, the investments in debt interests of a single issuer must not exceed one-half of 1% of the state's total average portfolio.

The act provides that, in the case of an investment in debt interests of a single issuer that is a *foreign nation*, the amount of investment must not exceed, in the aggregate, 1% of the state's total average portfolio.

### **Enterprise zone agreements**

(R.C. 5709.62, 5709.63, and 5709.632)

Under ongoing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into an enterprise zone agreement with a business for the purpose of

fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives.

Prior law authorized local governments to enter into enterprise zone agreements through October 15, 2010. The act extends the time during which local governments may enter these agreements to October 15, 2011.

### **State subsidy for hosting sports events**

(R.C. 122.12)

Ongoing law authorizes the Director of Development to make grants of General Revenue Fund money to counties or municipal corporations hosting major sporting events (specified below), beginning July 1, 2011. The grant amount is to be "based on" the increased state sales tax revenue directly attributable to the preparation for and presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than \$250,000. No individual grant may exceed \$500,000, and the total of all grants in any fiscal year may not exceed \$1 million.

The games that qualify for grants are the following: the National Football League "Super Bowl," World Cup soccer matches, NCAA championship games, NCAA football Bowl Championship Series games, all-star games of the National Basketball Association, National Hockey League, or Major League Baseball, the National Senior Games, and the Olympic Games.

The act adds the following to the list of qualifying events:

- (1) National Association for Stock Car Auto Racing (NASCAR) races;
- (2) The Air New Zealand Golden Oldies World Rugby Festival;
- (3) The Golden Gloves of America, Inc., National Golden Gloves Tournament;
- (4) The USA Boxing Association National Championships;
- (5) The International Boxing Association World Cup or World Championships.

Under ongoing law, a county or municipal corporation enters into an agreement with a site selection organization when seeking a grant under the state program. The law lists organizations that correspond to the qualifying games or matches in the definition of "site selection organization." The act adds NASCAR, the Air New Zealand Golden Oldies World Rugby Secretariat, the Golden Gloves of America, Inc., the USA

Boxing Association, and the International Boxing Association to the list of site selection organizations.

Finally, the act clarifies that in addition to a National Collegiate Athletic Association championship game, a championship *match* also qualifies for the grant program.

### **Agricultural commodity testing**

(R.C. 926.31; R.C. 926.01, not in the act)

The ongoing Agricultural Commodity Handlers Law defines all of the following terms:

"Producer" means any person who grows an agricultural commodity on land that the person owns or leases.

"Agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling, that is, a person who does any of the following:

(1) Engages in or participates in the business of purchasing from producers agricultural commodities for any use in excess of 30,000 bushels annually;

(2) Operates a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity;

(3) Receives into a warehouse an agricultural commodity purchased under a delayed price agreement; or

(4) Provides marketing functions, including storage, delayed price marketing, deferred payment, feed agreements, or any other marketing transaction whereby control is exerted over the monetary proceeds of a producer's agricultural commodities by a person other than the producer.

"Depositor" means:

(1) Any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale;

(2) Any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity; or

(3) Any licensed handler storing an agricultural commodity that the licensed handler owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensed handler or any other licensed handler.

"Agricultural commodity" means barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, speltz, or any other agricultural crop that is designated by the Director of Agriculture by rule.

Ongoing law modified by the act establishes requirements and procedures governing the licensing of handlers, the operation of grain warehouses, and the deposit and storage of agricultural commodities at them. Included are requirements and procedures for agricultural commodity testing. Under those requirements and procedures, when a licensed handler receives a shipment of an agricultural commodity from a producer or a producer's agent, either for sale or for storage under a bailment agreement, the handler must have a representative sample drawn for testing by an agricultural commodity tester to determine the commodity's quality. At the request of the producer or the producer's agent, the tester must immediately test the sample and notify the producer or agent of the test results and of any price discount, premium, or conditioning charge that is applicable to the commodity's value. If, prior to or during the unloading of the shipment, the handler believes that the original sample is not representative or if the producer or the producer's agent requests a second sample to be drawn, the handler must have a second sample drawn to be used for the testing.

Upon notification of the test results and value adjustment to be applied, the producer or agent must: (1) refuse to sell or store the commodity unless it has been unloaded prior to testing, (2) agree to sell or store the commodity and accept the test results and the applicable value adjustment, or (3) agree to sell or store the commodity, but reject the test results and order the handler to forward the sample to a federally licensed grain inspector for a final testing. If option (3) is selected, the producer, agent, or handler may specify which factor or factors are to be tested by the federal inspector. The federal inspector's determination is binding on both the handler and the producer or agent as the basis for determining the premium or discount and settlement price or the conditioning charge, as applicable. Additionally, if the test does not change or lowers the value of the commodity, the producer is responsible for the cost of forwarding the sample and the cost of the federal inspection; if the test increases the commodity's value, the handler is responsible for those costs.

The law also specifies that a licensed handler and any producer or the producer's agent may agree to combine representative samples of each of several shipments of the same commodity that the handler receives during any one business day to obtain a single test result. Finally, the requirements and procedures discussed above do not relieve any contractual obligations in effect between the licensed handler or producer.

The act applies all of the agricultural commodity testing requirements and procedures discussed above to a depositor or depositor's agent rather than to a producer or producer's agent.

### **Deferred compensation programs**

(R.C. 148.06)

Public employees in Ohio are eligible under ongoing law to participate in a deferred compensation program administered by the Ohio Public Employees Deferred Compensation Board. In addition to this program, certain governmental entities, such as counties and park districts, may offer up to two additional deferred compensation programs. The act adds regional water and sewer districts and regional transit authorities to the list of governmental entities that may offer additional deferred compensation programs.

### **School district and building performance ratings**

(R.C. 3302.03)

The act revises Ohio's method of rating school district and school building academic performance. Under prior law, if a district or building failed to make the federal standard of adequate yearly progress (AYP) for three or more consecutive years, the highest rating it could receive was continuous improvement. The act makes three changes to the way AYP affects individual district and building ratings.

**First**, under the act, the failure of an otherwise excellent or effective district or building to make AYP does not affect the district's or building's rating at all, unless the district or building has failed to make AYP for two or more of the same student subgroups for three or more consecutive years. Whereas prior law considered only how long the district or building had not made AYP, the act also takes into account which subgroups are not making it. The district or building will have its rating lowered for not making AYP only when there is a pattern of missing AYP with the same subgroups of students.

For example, an otherwise excellent building could fail to make AYP for disabled students and economically disadvantaged students for two consecutive years, but, in the third year, make AYP for economically disadvantaged students and not make AYP for disabled students and limited English proficient students. That building formerly would be rated continuous improvement because it failed to make AYP for three straight years. Under the act, though, the building would still receive an excellent rating since it did not miss AYP for the same two subgroups all three years. However, if, in the third year, the building again failed to make AYP for economically



disadvantaged students, its rating would drop because it would have missed AYP for two of the same subgroups (disabled students and economically disadvantaged students) for three years.

**Second**, in the case of an otherwise excellent district or building that repeatedly fails to make AYP for two or more of the same subgroups, the act requires that its rating be lowered only one level, to effective, instead of two levels, to continuous improvement. A district or building that otherwise achieves an effective rating would still be reduced one level, to continuous improvement, for failing to make AYP for two or more of the same subgroups over three or more consecutive years.

**Third**, the act repeals a provision prohibiting the Department of Education from lowering a district's or building's rating from the previous year based solely on one subgroup not making AYP. This change will affect only continuous improvement districts and buildings, since under the act AYP is a factor for excellent and effective districts and buildings only when multiple subgroups fail to make AYP over several years. As a result, a continuous improvement district or building may be penalized for not making AYP sooner than a highly performing district or building. Whereas a district or building that was previously rated continuous improvement could receive a lower rating after one subgroup fails to make AYP for one year, an excellent or effective district or building would not be penalized with a lower rating until the same two subgroups did not make AYP for three consecutive years.

## **Background**

Ongoing law provides for the annual rating of school districts and individual school buildings based on their academic performance.<sup>2</sup> The five classes of performance under the rating system are "excellent," "effective," "continuous improvement," "academic watch," and "academic emergency." The ratings are determined by:

(1) Meeting or not meeting specified performance indicators (75% student proficiency on all applicable state achievement assessments, 93% attendance rate, and 90% graduation rate);

(2) Attaining a specified performance index score;<sup>3</sup> and

(3) Making or not making AYP on state achievement assessments among specified subgroups of test takers.<sup>4</sup>

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<sup>2</sup> R.C. 3302.03(B).

<sup>3</sup> The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement assessments by students scoring at all levels.



The following table shows how the performance ratings were determined under prior law using these criteria.

<b>Rating</b>	<b>Percentage of performance indicators met</b>		<b>Performance index score</b>		<b>Makes AYP</b>
Excellent	94%-100%	<i>or</i>	100 to 120	<i>and</i>	Yes
	94%-100%	<i>or</i>	100 to 120	<i>and</i>	No*
Effective	75%-93%	<i>or</i>	90 to 99	<i>and</i>	Yes
	75%-93%	<i>or</i>	90 to 99	<i>and</i>	No*
Continuous improvement	0%-74%	<i>and</i>	0 to 89	<i>and</i>	Yes
	50%-74%	<i>or</i>	80 to 89	<i>and</i>	No
Academic watch	31%-49%	<i>or</i>	70 to 79	<i>and</i>	No
Academic emergency	0%-30%	<i>and</i>	0 to 69	<i>and</i>	No

\* A district or school could be rated no higher than continuous improvement if it missed AYP for more than two consecutive years. However, no district or school could be rated lower than the prior year solely because one subgroup did not make AYP.

Beginning with the 2007-2008 school year, the performance ratings incorporated a fourth component known as the "value-added progress dimension," which tracks the amount of a student's academic growth attributable to a particular district or building.<sup>5</sup> With this component, if a district or building demonstrates more than a standard year of academic growth in reading and math for two consecutive years, its rating is raised one level. If a district or building shows less than a standard year of academic growth in those subjects for three straight years, its rating is lowered one level.

## **AYP**

AYP is a measure of performance used to determine whether a particular school district or building is meeting the goals of the federal No Child Left Behind Act. Under that act, certain graduated sanctions (ranging from curricular changes and offering tutoring opportunities to reconstitution of administrative and instructional staff) must be imposed if a district or building repeatedly fails to make AYP.<sup>6</sup> Generally, no district or building may make AYP unless (1) 95% of the students in each subgroup required to

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<sup>4</sup> The subgroups are each of the federally recognized ethnic classifications (African-American, American Indian or Native Alaskan, Asian or Pacific Islander, Hispanic, multi-racial, and white); disabled students; economically disadvantaged students; and limited-English proficient students.

<sup>5</sup> R.C. 3302.021, not in the act.

<sup>6</sup> 20 United States Code (U.S.C.) 6316.

take a test actually take the test and (2) a specified percentage of each subgroup of test takers attains scores set by the state Department of Education.<sup>7</sup> The expected scoring performance on the state assessments for purposes of AYP varies from district-to-district and building-to-building. It is generally different from (and often lower than) the 75% proficiency rate required under the state performance indicators.

While the state must have in place a system to measure AYP and to impose sanctions for districts or buildings that persistently do not make AYP, the use of that measure in the state rating system is not required under federal law.

## **Appropriations**

### **Job Ready Site**

(Sections 7 and 8)

Under ongoing law, the Department of Development administers the Job Ready Site program to provide grants to pay for construction and other costs for sites and facilities primarily intended for commercial, industrial, or manufacturing use on behalf of eligible applicants, such as political subdivisions (R.C. 122.085 to 122.0820, not in the act). The act appropriates \$30 million for fiscal years 2011 and 2012 to the Job Ready Site program. To fund this capital appropriation, the act authorizes the Ohio Public Facilities Commission to issue and sell original obligations of the state in the aggregate amount not to exceed \$30 million, as previously authorized under Section 2p of Article VIII, Ohio Constitution.

### **Clean Ohio**

(Sections 9 and 10)

Under ongoing law, the Clean Ohio Program funds, among other things, projects aimed at brownfield revitalization (R.C. 122.65 to 122.659, not in the act). The act appropriates \$80 million for fiscal years 2011 and 2012 for Clean Ohio Revitalization and \$20 million for fiscal years 2011 and 2012 for Clean Ohio Assistance. To fund this capital appropriation, the act authorizes the Treasurer of State to issue and sell original obligations of the state in the aggregate amount of \$100 million, as previously authorized under Sections 2o and 2q of Article VIII, Ohio Constitution.

The act also authorizes the Director of Development to reallocate moneys for the purpose of funding certain revitalization grants or loans if the Department of

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<sup>7</sup> 20 U.S.C. 6311(b)(2)(E) to (J).

Development realizes Clean Ohio Fund project savings attributable to any of the following instances:

(1) The completion of any project for less than the amount of grant funds awarded, subject to the local matching funds participation requirement;

(2) The cancellation of grant awards in which Clean Ohio Fund moneys have been encumbered for a project but not disbursed;

(3) Any recapture of Clean Ohio Fund moneys due to a grantee's default or failure to perform the conditions of the grant agreement.

### **Education**

(Sections 11 through 16 and 22)

To ensure compliance with the State Fiscal Stabilization Fund requirements for fiscal year 2010 under the federal American Recovery and Reinvestment Act (ARRA; the federal stimulus act), the act makes changes to appropriations for primary and secondary education. The act creates the ARRA Compliance Fund, from which funds will be paid out to school districts and other schools to fulfill the state's obligations under ARRA. The act requires the transfer of cash from the Lottery Profits Education Reserve Fund to the Lottery Profits Education Fund in fiscal year 2010 and increases the Foundation Funding appropriation by the same amount. It also appropriates money in fiscal year 2010 for chartered nonpublic schools.

### **Casino Control Commission**

(Section 18)

The act makes appropriations in fiscal year 2011 for operating expenses of the Casino Control Commission established in Am. Sub. H.B. 519 of the 128th General Assembly.

### **Inspector General; Ohio Ethics Commission**

(Sections 19 and 20)

The act appropriates money in fiscal year 2011 to both the Inspector General and the Ohio Ethics Commission to be used solely for the performance of their casino-related duties.

## Ohio Board of Regents (PARTIALLY VETOED)

(Section 21)

The Chancellor of the Ohio Board of Regents is required by the act to develop a work force development pilot program for areas of the state with high unemployment. Public institutions of higher education, career technical schools, and joint vocational schools are eligible to participate in the program. A total of \$50 million is appropriated in fiscal year 2011 for the operation of the program, with \$25 million designated for urban areas and \$25 million designated for rural areas. Of the funding for rural areas, half must be used for areas in Appalachia. The Chancellor must propose the pilot program to the Controlling Board. The Governor vetoed a provision that would have required Controlling Board approval of the program with at least five votes in favor of the program, including those of at least two Senators and at least two Representatives.

The act also appropriates \$50 million to the Board of Regents in fiscal year 2011 for operation of the Co-Op/Internship Program.

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### COMMENT

1. R.C. 1513.01(N) (Coal Surface Mining Law), not in the act, defines "pollution" as placing any sediments, solids, or waterborne mining related wastes, including, but not limited to, acids, metallic cations, or their salts, in excess of amounts prescribed by the Chief of the Division of Mineral Resources Management into any waters of the state or affecting the properties of any waters of the state in a manner that renders those waters harmful or inimical to the public health, or to animal or aquatic life, or to the use of the waters for domestic water supply, industrial or agricultural purposes, or recreation.

2. R.C. 1513.01(P), not in the act, defines "reclamation" as backfilling, grading, resoiling, planting, and other work that has the effect of restoring an area of land affected by coal mining so that it may be used for forest growth, grazing, agricultural, recreational, and wildlife purpose, or some other useful purpose of equal or greater value than existed prior to any mining.

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### HISTORY

ACTION	DATE
Introduced	10-06-09
Referred, S. Judiciary - Civil Justice	10-20-09
Re-referred, S. Environment & Natural Resources	11-18-09
Reported, S. Environment & Natural Resources	12-15-09



Passed Senate (33-0)	01-12-10
Reported, H. Agriculture & Natural Resources	05-17-10
Re-referred, H. Finance & Appropriations	05-25-10
Reported, H. Finance & Appropriations	05-27-10
Passed House (79-17)	05-27-10
Senate refused to concur in House amendments (12-19)	06-02-10
House requested conference committee	06-02-10
Senate acceded to request for conference committee	06-02-10
Senate agreed to conference committee report (32-0)	06-03-10
House agreed to conference committee report (98-0)	06-03-10

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