



Final Analysis

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

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

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** This final 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 H.B. 66 for an analysis of such provisions.*

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ADJUTANT GENERAL

- Requires the Adjutant General to reimburse premiums of defined "active duty members" of the Ohio National Guard who choose to purchase life insurance under a specified federal program.
- Requires the Adjutant General to pay a \$100,000 death benefit to a designated beneficiary or beneficiaries if defined "active duty members" of the Ohio National Guard die while performing active duty.
- Requires the Commander of the Ohio Military Reserve (OHMR) to annually report to the General Assembly all OHMR expenditures and the use of all OHMR funds.
- Creates the Ohio Military Reserve Homeland Security Study Commission to evaluate the OHMR's role and effectiveness and to report its findings to the General Assembly before January 1, 2006.

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

(R.C. 5919.31)

The act requires the Adjutant General to reimburse an active duty member (see below) of the Ohio National Guard in an amount equal to the monthly life insurance premium paid for each month or part of a month by the member while being an active duty member--if the member chooses to purchase life insurance from the federal Servicemembers' Group Life Insurance program. "Active duty member" generally is defined as a member of the Ohio National Guard on active duty pursuant to an executive order of the President of the United States, the federal Homeland Defense Activity Law, another act of Congress, or a proclamation of the Governor, but *does not include* a member performing full-time Ohio National Guard duty or performing special work active duty under specified federal law.¹

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

Death benefit for active duty members of the Ohio National Guard

(R.C. 5919.33)

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

¹ The "Act of October 3, 1964," 78 Stat. 999, 32 U.S.C. 502(f).

Ohio Military Reserve

(R.C. 5920.01; Section 560.03)

Background

The Ohio Military Reserve (OHMR) is organized as a reserve military force to defend the state when the Ohio National Guard is employed so as to leave the state without adequate defense. The Governor is its commander-in-chief and is responsible for prescribing rules under which the OHMR operates. The OHMR cannot be called into the military service of the United States, but it may become a component of the Ohio National Guard and subject to the Secretary of Defense's regulations thereby. Enlistment in the OHMR does not exempt a person from military service under any law of the United States.

New annual report

The act requires the OHMR's commander to annually prepare, and deliver to the General Assembly within three months of the end of the state fiscal year, a written report of all OHMR expenditures and of the use of all OHMR funds (R.C. 5920.01(B)).

New study commission

The act creates the Ohio Military Reserve Homeland Security Study Commission to evaluate the OHMR's role and effectiveness. The Commission consists of seven members: the Chair of the House Commerce and Labor Committee, who will serve as the study commission's chairperson, two members of the House of Representatives appointed by the House Speaker, two members of the Senate appointed by the Senate President, the Adjutant General or the Adjutant General's designee, and the Director of Public Safety or the Director's designee. The act directs the study commission to report its findings to the General Assembly before January 1, 2006. (Section 560.03.)

DEPARTMENT OF ADMINISTRATIVE SERVICES

- Defines for appointing authorities when "reasons of economy" exist that may result in the abolishment of a position and the layoff of the employee holding the position.
- Redefines for appointing authorities the term "abolishment" as the deletion of a position from the organization or structure of an appointing authority.



- Permits an appointing authority to appeal a State Personnel Board of Review decision pertaining to a classified employee's layoff, to the appropriate court of common pleas under the Administrative Procedure Act.
- Requires the Director of Administrative Services to establish guidelines rather than agency procurement goals for state universities and the Ohio School Facilities Commission for awarding contracts to EDGE business enterprises, thus allowing them to establish their own procurement goals.
- Allows the Director to use an equivalent code classification instead of standard industrial code when establishing agency procurement goals and to establish a system comparable to a point system to evaluate bid proposals to encourage EDGE business enterprises to participate in the procurement of certain services.
- Exempts EDGE Program applicants' financial information and trade secrets from the Public Records Law unless certain circumstances apply.
- Authorizes the Director of Administrative Services to debar vendors and contractors from consideration for contract awards based on separate, specified factors and establishes procedures governing the debarments, including notice and hearing requirements.
- Establishes the Office of Information Technology in the Department of Administrative Services to advise the Governor regarding the superintendence and implementation of statewide information technology policy and to lead, oversee, and direct activities regarding the development and use of information technology by specified state agencies.
- Changes the definitions of "state agency" and "law enforcement officer" as used in the Fleet Management Law to include or exclude various individuals or entities from those terms.
- Includes cargo vans within the types of motor vehicles subject to the Fleet Management Law.
- Generally requires state agencies subject to the Fleet Management Law to acquire motor vehicles through the master leasing program established by the Department of Administrative Services.

- Prohibits reimbursement to state employees who use their own personal vehicles for any mileage incurred above an amount the Department of Administrative Services determines annually unless the Department approves reimbursement for the excess mileage in accordance with specified standards.
- Requires a state institution of higher education to use the Department of Administrative Services' fleet management tracking system, fuel card program (to pay for fuel and vehicle maintenance), and bulk fuel purchases contract (to make bulk fuel purchases) if the Department certifies pursuant to an annual specified reporting procedure that the institution will save funds by doing so.
- Authorizes proceeds from the disposition under the Fleet Management Law of motor vehicles that were purchased with General Revenue Fund money to be deposited, in the discretion of the Director of Administrative Services, to the credit of either the Fleet Management Fund or the Investment Recovery Fund, rather than just into the Fleet Management Fund.
- Requires state agencies to submit data and other information to the Department of Administrative Services about motor vehicles that otherwise are not subject to the Fleet Management Law.
- Transfers, as of July 1, 2005, or the earliest date thereafter permitted by law, the functions of the State Committee for the Purchase of Products and Services Provided by Persons with Severe Disabilities ("State Use Committee"), formerly housed in the Department of Mental Retardation and Developmental Disabilities, to the Department of Administrative Services.
- Requires the Department of Administrative Services to replace, by July 1, 2007, the State Use Committee with a new Office of Procurement from Community Rehabilitation Programs (OPCRP).
- Requires the OPCRP to establish a new program that generally requires state agencies and entities, as well as county, township, and village governments, to purchase supplies and services (1) provided by persons with work-limiting disabilities who are employed by community rehabilitation programs and (2) from an associated procurement list established by the OPCRP.



- Generally requires the OPCRP to establish fair market prices for items on the procurement list, and provides that purchases from the list are not subject to any competitive selection process.
- Establishes that a fee must be paid to DAS by all agencies and entities making purchases under the OPCRP purchase program to cover DAS' costs in administering the program.
- Permits an appointing authority to assign duties of a higher classification to an exempt employee for not more than two years with that employee's consent in non-vacancy circumstances.
- Permits, if necessary, employees who are exempt from the Collective Bargaining Law and who are assigned to duties within their agency to maintain operations during the Ohio Administrative Knowledge System implementation, to agree to a temporary assignment for more than two years.
- Would have required the Department of Administrative Services to recommend by January 1, 2007, to the leaders of the General Assembly a state government reorganization plan focused on increased efficiencies in the operation of state government and a reduced number of state agencies (VETOED).

Layoffs due to abolishment of a position by an appointing authority

(R.C. 124.321(D))

Overview of former and continuing law

Under the Civil Service Law, one of the continuing reasons for which an appointing authority may lay off an employee is as a result of the abolishment of the employee's position (see grounds in next paragraph). Formerly, the abolishment had to be due to the lack of continued need for that position--the abolishment was a *permanent* deletion of the position from the appointing authority's organization or structure. The appointing authority had to indicate in its determination to abolish the position this "lack of continued need" for it.

Under continuing law, an abolishment of a position and, therefore, a consequent lay off of the employee holding the position may be (1) as the result of

a reorganization for the efficient operation of the appointing authority, (2) for reasons of economy, or (3) for lack of work.

Definition of and bases for abolishment

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

Layoff due to abolishment of a position for reasons of economy

The act essentially defines for appointing authorities the second basis-- "reasons of economy"--that may result in the abolishment of a position and the lay off of the employee holding it. Specifically, the act provides that "reasons of economy" must be determined at the time the appointing authority proposes to abolish the position. Additionally, "reasons of economy" generally must be based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the position. However, the act allows "reasons of economy" to be based on savings with respect to salary and benefits only if both of the following apply:

- Either the appointing authority's operating appropriation has been reduced by an executive or legislative action, or the appointing authority has a current or projected deficiency in funding to maintain current or projected levels of staffing and operations.
- It files a notice of the position's abolishment with the Director of Administrative Services within one year of the appointing authority's operating appropriation being reduced by an executive or legislative action or the appointing authority having a current or projected deficiency in funding as described above.

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

- The position's abolishment must be done in good faith and not as a subterfuge for discipline.
- If a circumstance affects a specific program only, the appointing authority only may abolish a position within that program.
- If a circumstance does not affect a specific program only, the appointing authority may identify a position that it considers appropriate for abolishment based on the reasons of economy.

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

(R.C. 124.328)

Continuing law allows a classified employee to appeal the employee's layoff by an appointing authority to the State Personnel Board of Review (SPBR). And, under former law, only the employee could appeal the SPBR's decision to the appropriate court of common pleas under the Administrative Procedure Act.

The act also allows an appointing authority to so appeal a SPBR decision.

Encouraging Diversity, Growth, and Equity (EDGE) Program

Procurement goals and guidelines for contracting with EDGE business enterprises

(R.C. 123.152(B)(2) and (14))

Under continuing law, state agencies are encouraged to contract with "EDGE business enterprises," which are businesses certified by the Director of Administrative Services as participants in the Encouraging Diversity, Growth, and Equity (EDGE) Program. The Director must establish *procurement goals* for state agencies, including state universities and the Ohio School Facilities Commission, to contract with EDGE business enterprises generally for services, goods, and public improvements.² The act requires the Director to establish *guidelines*, rather than procurement goals, for state universities and the Ohio School Facilities

² For purposes of this provision, "state university" is defined as a public institution of higher education that is a body politic and corporate, including the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, The Ohio State University, Shawnee State University, the University of Toledo, Wright State University, and Youngstown State University.

Commission to allow the universities and Commission to establish their own procurement goals for contracting with EDGE business enterprises.

Standard industrial code

(R.C. 123.152(B)(2))

Under continuing law, the Director is required to establish agency procurement goals for contracting with EDGE business enterprises based on the availability of eligible program participants by region or geographic area. Formerly, the procurement goals also had to be established by standard industrial code, but the act allows the Director to use "equivalent code classification" as an alternative to using standard industrial code.

Point system to evaluate bid proposals for EDGE participants

(R.C. 123.152(B)(6))

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

Exemption from Public Records Law for EDGE applicants

(R.C. 123.152(C))

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

Debarment of vendors and contractors

(R.C. 125.25 and 153.02)

Overview

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

Vendors

Under the act, the Director of Administrative Services may debar a vendor from consideration for contract awards (apparently *for supplies or services*) upon a finding, based upon a reasonable belief, that the vendor has done any of the following:

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

(2) Failed to substantially perform a contract (according to its terms, conditions, and specifications) within specified time limits;

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

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

(5) Colluded to restrain competition by any means;

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

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

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

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

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

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

When the Director reasonably believes that grounds for debarment exist, the Director must send the vendor a notice of proposed debarment indicating the

grounds for the proposed debarment and the procedure for requesting a hearing. The hearing must be conducted in accordance with the Administrative Procedure Act. If the vendor does not request a hearing in the specified manner, the Director must issue the debarment decision without a hearing and must notify the vendor of the decision by certified mail, return receipt requested.

The Director must determine the length of a debarment period and may rescind a debarment at any time upon notification to the vendor. During a debarment period, a vendor is not eligible to participate in any state contract, but after the debarment period expires, the vendor is eligible to be awarded a state contract (apparently for supplies or services).

Through the Office of Information Technology (see the next portion of this analysis) and the Office of Procurement Services, the Director is required to maintain a list of all vendors currently debarred from participating in state contracts (apparently for supplies or services).

Contractors

The Director also may debar under the act a contractor from contract awards for certain *public improvements* upon proof that the contractor has done any of the following:

- (1) Defaulted on a contract requiring the execution of a takeover agreement;
- (2) Knowingly failed during the course of a contract to maintain the coverage required by the Bureau of Workers' Compensation;
- (3) Knowingly failed during the course of a contract to maintain the contractor's drug-free workplace program as required by the contract;
- (4) Knowingly failed during the course of a contract to maintain insurance required by the contract or otherwise by law, resulting in a substantial loss to the owner;
- (5) Misrepresented the firm's qualifications in the selection process set forth in the Professional Design Services Law;
- (6) Been convicted of a criminal offense related to the application for or performance of any public or private contract, including embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense that directly reflects on the contractor's business integrity;

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

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

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

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

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

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

Office of Information Technology

(R.C. 125.041 and 125.18)

The act establishes the Office of Information Technology that is to be housed within the Department of Administrative Services (DAS). The Office is to be under the supervision of a chief information officer (CIO) who must serve as the director of the Office. The CIO must be appointed by the Governor and is subject to removal at the pleasure of the Governor.

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

technology development and use.³ In that regard, the CIO must do all of the following:

- Coordinate and superintend statewide efforts to promote common use and development of technology by state agencies. The Office must establish policies and standards that govern and direct state agency participation in statewide programs and initiatives.
- Establish policies and standards for the acquisition and use of information technology by state agencies, including, but not limited to, hardware, software, technology services, and security, with which state agencies must comply.
- Establish criteria and review processes to identify state agency information technology projects that require alignment or oversight. As appropriate, the Office must provide the Governor and the Director of Budget and Management with notice and advice regarding the appropriate allocation of resources for those projects. The CIO may require state agencies to provide, and may prescribe the form and manner by which they must provide, information to fulfill the CIO's alignment and oversight role.

The Office is permitted to make contracts for, operate, and superintend technology supplies and services for state agencies, and the act confers on the Office the same authority DAS has, under specified purchasing of supplies and services statutes, for the purchase of information technology supplies and services for state agencies. The Office also may establish cooperative agreements with federal and local government agencies and state agencies that are not under the authority of the Governor for the provision of technology services and the development of technology projects.

³ For the purpose of these provisions, "state agency" means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government, other than any state-supported institution of higher education, the office of the Auditor of State, Treasurer of State, Secretary of State, or Attorney General, the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, the State Highway Patrol Retirement System, the General Assembly or any legislative agency, or the courts or any judicial agency (division (G)).

Changes to the Fleet Management Law

(R.C. 125.831 and 125.832)

Overview of continuing law

Continuing law requires the Director of Administrative Services to establish and operate a fleet management program for purposes including, but not limited to, cost-effective acquisition, maintenance, management, analysis, and disposal of all motor vehicles owned or leased by the state. It also grants the Department of Administrative Services (DAS) exclusive authority over the acquisition and management of all motor vehicles used by state agencies.

Changes in definitions

Formerly, a "motor vehicle" for purposes of the Fleet Management Law generally was defined as any automobile, car minivan, passenger van, sport utility vehicle, or pickup truck with a gross vehicle weight under 12,000 pounds. The act continues to so define a "motor vehicle" but also includes a cargo van within the definition for purposes of the Fleet Management Law.

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

The Fleet Management Law formerly defined "state agency" to mean every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government, other than (1) a state-supported institution of higher education, (2) the offices of the Governor, Lieutenant Governor, Auditor of State, Treasurer of State, Secretary of State, or Attorney General, (3) the General Assembly or any legislative agency, or (4) the courts or any judicial agency. The act modifies this definition to mean every organized body, office, *board, authority, commission*, or agency established by the laws of Ohio for the exercise of any *governmental or quasi-governmental* function of state government *regardless of the funding source for that entity*, other than continuing law's four



categories of exempt entities mentioned above and, as added by the act, any state retirement system or retirement program established by or referenced in the Revised Code. Thus, this definitional change at the same time adds to, and removes from, the state agencies subject to the Fleet Management Law. The term "state-supported institution of higher education" also becomes "state institution of higher education" under the act (see more detail below).

Acquisitions under DAS' master leasing program

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

Limit on reimbursement for state employees who use their personal vehicles

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

Requirements for state institutions of higher education

Under the act, not later than each September 15, each state institution of higher education must report to DAS on all of the following topics relating to motor vehicles that it acquires and manages: (1) the methods it uses to track the motor vehicles, (2) whether or not it uses a fuel card program to purchase fuel for, or to pay for the maintenance of, the motor vehicles, and (3) whether or not it makes bulk purchases of fuel for the motor vehicles. Assuming that it *does not use* the fleet management tracking, fuel card program, and bulk fuel purchases tools and services that DAS provides, the report also must include (a) an analysis of the amount the institution would save, if any, if it were to use the fleet management tracking, fuel card program, and bulk fuel purchases tools and services that DAS provides instead of the fleet management system the institution regularly uses and (b) a rationale for either continuing with the fleet management

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

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

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

Disposition of proceeds derived from sale of motor vehicles

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

Additional motor vehicles included in the fleet reporting system

Continuing law requires the Director to establish and maintain a fleet reporting system and correspondingly to require state agencies (see definition above) to submit to DAS information relative to state motor vehicles, to be used in operating the fleet management program. The act requires state agencies to submit information not only with respect to state "motor vehicles" covered by the Fleet Management Law (see definition above) but also relative to state motor vehicles *excluded from* the definition of those covered "motor vehicles," namely (1) motor vehicles used by law enforcement officers and law enforcement agencies and (2) motor vehicles that are equipped with specialized equipment that is not normally found in a vehicle and that is used to carry out a state agency's specific and specialized duties and responsibilities.

Purchases of supplies and services of persons with disabilities

State Use Committee--background

(R.C. 4115.31 to 4115.35)

Temporarily continuing law (see below "transfer" and "termination" discussion) provides for the creation of a state committee for the purchase of products and services provided by persons with severe disabilities (commonly referred to as the "State Use Committee"). The State Use Committee must adopt rules under the Administrative Procedure Act that require the Committee to take various actions that have the goal of promoting the purchase by specified governmental entities of products and services of persons with severe disabilities.⁴ Among those actions are determining products and services that are suitable for procurement by specified governmental entities, putting those products and services on a procurement list the Committee must establish, maintain, and publish, and verifying the fair market price for the products and services.

Temporarily continuing law generally requires any state agency, instrumentality of the state, or political subdivision that intends to purchase any product or service to examine the procurement list and, if the product or service it intends to purchase is on the list and available, to procure it from an agency for persons with severe disabilities. Purchases made in this manner are not subject to competitive bidding requirements.

Former law provided that a subordinate named by the Director of Mental Retardation and Developmental Disabilities (MRDD) was to be the Committee's executive director and that the Director of MRDD had to furnish other staff and clerical assistance, office space, and supplies required by the Committee.

Transfer of State Use Committee functions to DAS

(R.C. 4115.32 and Sections 203.12, 203.12.01, and 209.09.06)

In general. The act provides that, *effective July 1, 2005*, or the earliest date after that date permitted by law, the State Use Committee becomes part of the Department of Administrative Services (DAS). The Committee's functions, assets, and liabilities, including its records, are to be transferred to DAS, and then (1) DAS is to become the successor to, assume the obligations of, and otherwise

⁴ *Under temporarily continuing law, a "person with a severe disability" means an individual or class of individuals with a physical disability, including visual impairment, or mental disability, according to criteria established by the State Use Committee (R.C. 4115.31--not in the act).*

constitute the continuation of the Committee and (2) the duties of the Committee's executive director are transferred to DAS. The DAS Director must designate a subordinate to act as the Committee's executive director.

On-going business, rights, and rules. The act provides that any business commenced but not completed by the Committee on June 30, 2005, must be completed by DAS in the same manner and with the same effect as if completed by the Committee. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer.

All of the Committee's rules, orders, and determinations will continue in effect as rules, orders, and determinations of DAS, until modified or rescinded by DAS. If necessary to ensure the integrity of the Ohio Administrative Code, the Director of the Legislative Service Commission must renumber the Committee's rules to reflect the transfer.

Employees. Department of Mental Retardation and Developmental Disabilities employees designated as staff for the Committee will be transferred to DAS. The transferred employees will retain their positions and all benefits, subject to the statutory law governing layoffs and provisions of union contracts between the state and all bargaining units affected.

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

Office of Procurement from Community Rehabilitation Programs

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

Overview. After the transfer to DAS of the functions of the State Use Committee--in particular, its program for the purchase of products and services of persons with severe disabilities, the act provides for the termination of the Committee and that program and their replacement with the Office of Procurement from Community Rehabilitation Programs and a program to promote the procurement of supplies and services of persons with work-limited disabilities.

Creation of the Office; termination of the State Use Committee. The act provides that, *not later than July 1, 2007*, the DAS Director must establish the Office of Procurement from Community Rehabilitation Programs (OPCRP) within



DAS. The Director also must designate a DAS employee as administrator of the OPCRP.

The act correspondingly provides that not later than July 1, 2007, the Director must abolish the State Use Committee and its program for the purchase of products and services of persons with severe disabilities. Abolition of the Committee will make all the laws governing the Committee no longer effective.

Key definitions. The OPCRP purchase program provides for the purchase by government ordering offices of supplies or services provided by persons with a work-limiting disability who are employed by a community rehabilitation program. The act defines a "government ordering office" as any of the following: (1) any state agency, including the General Assembly, the Ohio Supreme Court, and the office of a state elected official, or any state authority, board, bureau, commission, institution, or instrumentality that is funded in total or in part by state money, or (2) a county, township, or village. "Person with a work-limiting disability" is defined by the act as an individual who has a disability as described in the federal Americans with Disabilities Act and who (1) because of that disability is substantially limited in the type or quantity of work the individual can perform or is prevented from working regularly, and (2) meets the criteria established by OPCRP.⁵ Finally, the act defines a "community rehabilitation program" as an agency that (1) is organized under federal or Ohio law such that no part of its net income inures to the benefit of any shareholder or other individual, (2) is certified as a sheltered workshop, if applicable, by the Wage and Hour Division of the U.S. Department of Labor, (3) is registered and in good standing with the Ohio Secretary of State as a domestic nonprofit corporation, (4) complies with applicable occupational health and safety standards required by federal or Ohio law, (5) operates in the interest of persons with work-limiting disabilities, provides vocational or other employment-related training to persons with work-limiting disabilities, and employs persons with work-limiting disabilities in the manufacture of products or the provision of services, and (6) is a nonprofit corporation for federal tax purposes.

Purchases from the procurement list. The act requires the OPCRP to establish, maintain, and periodically update a procurement list of approved supplies and services available from qualified nonprofit agencies or their agents (see below). Government ordering offices, before purchasing any supply or service, must determine whether the supply or service is on the procurement list.

⁵ *The term "disability" under the Americans with Disabilities Act means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual; a record of such an impairment; or being regarded as having such an impairment.*

And, if the supply or service is on the list *at a fair market price established by the OPCRP* (see below), the government ordering office must purchase it from the qualified nonprofit agency or an approved agent offering it for sale at that price. If the supply or service is on the procurement list but a *fair market price has not been established*, the government ordering office must attempt to negotiate an agreement with one or more of the listed qualified nonprofit agencies or approved agents.

Fair market price. The act provides that, prior to purchases by government ordering offices under its provisions, the OPCRP must attempt to establish for each item (i.e., supply or service) on the procurement list a fair market price that is representative of the range of prices that a government ordering office would expect to pay to purchase the item in the marketplace. When establishing a fair market price for an item, the OPCRP must consider the cost of doing business with respect to that item, including sales, marketing, and research and development costs and agent fees. If the OPCRP cannot establish a fair market price as described above, it must put the item on the list and let a government ordering office and qualified nonprofit agency negotiate the price. If the negotiations produce an agreement, the OPCRP may accept the agreed upon price as the fair market price. If an agreement is not successfully negotiated in such a case, the OPCRP may establish a fair market price or release the government ordering office from the act's requirements (see further "release" discussion below).

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

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

procurement list, and (3) provide marketing, administrative, and other services related to sales.

DAS fee for purchases. The act provides that all government ordering offices purchasing supplies and services from qualified nonprofit agencies or their approved agents must reimburse DAS a reasonable sum to cover its costs in administering the OPCR purchase program. DAS is permitted to bill administrative costs to government ordering offices directly, or allow qualified nonprofit agencies or their approved agents to collect and remit the fees. Any fee collected and remitted by qualified nonprofit agencies or their approved agents will be considered allowable expenses in addition to the fair market price. All fees collected under these provisions must be deposited in the state treasury to the credit of DAS' General Services Fund.

Release from compliance with OPCR purchase program. The act provides that when a government ordering office and a qualified nonprofit agency or approved agent are negotiating a price and they cannot come to an agreement, instead of setting a fair market price, the OPCR may release the government ordering office from compliance with the OPCR purchase program.

It also provides that the OPCR, on its own or pursuant to a request from a government ordering office, may release a government ordering office from compliance with the OPCR purchase program. If the OPCR determines that compliance is not possible or not advantageous, or if conditions prescribed in rules adopted by the OPCR for granting a release are met, it may grant such a release. That release must be written, specify the supplies or services to which it applies, state how long it will be effective, and state the reason for which it is granted.

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

Competitive selection nonapplicability. The act makes it clear that purchases under the OPCR purchase program by a *government ordering office* are not subject to any competitive selection requirements. It also specifies that purchases made by any of the following political subdivisions that are *not government ordering offices* from a qualified nonprofit agency or its approved agent are exempt from any competitive selection procedures otherwise required by law: municipal corporations, school districts, conservancy districts, township park districts, metropolitan park districts, regional transit authorities, regional airport authorities, regional water and sewer districts, port authorities, and any other

political subdivision approved by DAS to participate in DAS "pooled" supply or service purchase contracts. Finally, a political subdivision of the type listed in the previous sentence is prohibited from purchasing supplies or services from another party or political subdivision instead of through the OPCRCP purchase program if the supplies or services are on the procurement list, even if it can get the supplies or services at a lower price.

Other OPCRCP duties and powers. The act provides that the OPCRCP, in addition to its previously described functions, must or may do all of the following:

- Must monitor the procurement practices of government ordering offices to ensure compliance with the OPCRCP purchase program;
- Must develop and recommend to the DAS Director, in cooperation with qualified nonprofit agencies, government ordering offices, the Department of MRDD, the Department of Mental Health, the Department of Job and Family Services, and the Rehabilitation Services Commission, rules the Director must adopt in accordance with the Administrative Procedure Act for the effective and efficient administration of the OPCRCP purchase program;
- Must prepare a report of its activities by the last day of December of each year and post it on the OPCRCP web site;
- May enter into contractual agreements and establish pilot programs to further the objectives of the OPCRCP purchase program.

Provision of information to OPCRCP. The act requires a government ordering office and qualified nonprofit agency to provide the necessary information and documentation requested by the OPCRCP to enable it to effectively administer the purchase program.

Cooperation with other governmental agencies. The act provides that the Department of MRDD, Department of Mental Health, Department of Job and Family Services, Rehabilitation Services Commission, and any other state or governmental agency or community rehabilitation program responsible for the provision of rehabilitation and vocational educational services to persons with work-limiting disabilities may cooperate, through written agreement, in providing resources to DAS for the operation of the OPCRCP. The resources may include leadership and assistance in dealing with the societal aspects of meeting the needs of persons with work-limiting disabilities.

The act also permits the OPCRCP and all governmental entities that administer socioeconomic programs to enter into contractual agreements,

cooperative working relationships, or other arrangements that are necessary for the effective coordination and realization of the objectives of these entities.

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

(Section 569.03)

Under continuing codified law, whenever an employee is assigned to work in a higher-level position for a continuous period of more than two weeks but not more than two years *because of a vacancy*, the employee may be paid at a rate approximately 4% higher than the employee's current base pay rate. The Director of Administrative Services must approve the temporary position change. (R.C. 124.181(J)--not in the act.)

Under the act, notwithstanding that codified law, in cases where a *vacancy does not exist*, an appointing authority, with the written consent of an exempt employee (see below), may assign duties of a higher classification for not more than two years to the exempt employee. The exempt employee must receive compensation commensurate with the duties of the higher classification. The act utilizes continuing law's definitions of (1) "appointing authority"--an officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution, and (2) "exempt employee"--a permanent full-time or permanent part-time employee paid directly by warrant of the Auditor of State whose position is included in the job classification plan of the Department of Administrative Services but who is not considered a public employee for the purposes of the Collective Bargaining Law.

The act also permits employees who are exempt from the Collective Bargaining Law and who are assigned to duties within their agency to maintain operations during the Ohio Administrative Knowledge System implementation, to agree to a temporary assignment for more than two years if necessary--notwithstanding the codified law referred to above.

Department of Administrative Services' recommendations for a state government reorganization plan

(Section 315.04)

The act would have required the Department of Administrative Services to do both of the following: (1) begin, within 30 days after the provisions' effective date, developing recommendations for a state government reorganization plan focused on increased efficiencies in the operation of state government and a reduced number of state agencies and (2) present its recommendations to the

House Speaker, Senate President, and House and Senate Minority Leaders by not later than January 1, 2007. (VETOED.)

DEPARTMENT OF AGING

- Subject to certain exceptions, requires that the Ohio Department of Aging (ODA) assess a penalty equal to a long-term care facility's total annual bed fee for failure to pay a bed fee on or before a deadline established by ODA's rules.
- Permits ODA to assess a penalty, not to exceed \$500 for each violation, against a long-term care provider, other entity, or employee of a provider or entity that denies a representative of the state long-term care ombudsperson access to a long-term care facility or community-based long-term care site.
- Provides that a provider of community-based long-term care services under a program administered by ODA cannot receive payment unless the provider obtains certification from ODA.
- Requires that ODA develop a long-term care consultation program under which residents and potential residents of nursing facilities are provided with information about options available to meet long-term care needs and about factors to consider in making long-term care decisions.
- Eliminates provisions authorizing the Ohio Department of Job and Family Services (ODJFS) to administer a similar program for potential residents of nursing facilities who are not Medicaid applicants or recipients.
- Modifies the procedures ODJFS must follow when conducting assessments of Medicaid applicants or recipients who apply for admission to or reside in a nursing facility to determine whether they need the level of care provided by a nursing facility.
- Permits ODJFS' level of care assessments to be performed concurrently with consultations performed under the long-term care consultation program to be developed by ODA.

- Authorizes ODA to conduct an annual survey of nursing homes and residential care facilities and establishes a fine for failure to complete the survey.
- Requires that ODA publish the Ohio Long-Term Care Consumer Guide, which may be developed as a continuation or modification of the guide ODA currently publishes pursuant to its general rule-making authority.
- Requires that the Guide include information on both nursing homes and residential care facilities, including information obtained from customer satisfaction surveys conducted or provided for by ODA.
- Permits ODA to charge fees for the customer satisfaction surveys in an amount not exceeding \$400 annually for nursing homes and \$300 annually for residential care facilities.
- Requires that ODA carry out the day-to-day administration of the Medicaid program component known as the Program for All-Inclusive Care for the Elderly (PACE).
- Permits ODA to adopt rules for the PACE program if the rules: (1) are authorized by rules adopted by ODJFS and (2) address only those issues that are not addressed in ODJFS rules for the PACE program.
- Repeals the uncodified law under which the transfer of PACE administrative duties from ODJFS to ODA originally occurred.
- Provides for an individual admitted to a nursing facility while on a waiting list for the PASSPORT Program to be placed in the PASSPORT Program if it is determined that the PASSPORT Program is appropriate for the individual and the individual would rather be placed in the PASSPORT Program than continue to reside in a nursing facility.
- Creates the PASSPORT Evaluation Panel to select an independent contractor to conduct an evaluation of the PASSPORT Program (VETOED).
- Requires the PASSPORT Evaluation Panel to approve a final report by not later than June 30, 2007 (VETOED).
- Permits ODA to apply for the 2005 Aging and Disability Resource Center Grant Initiative of the Administration on Aging and the Centers

for Medicare and Medicaid and to create an Aging and Disability Resource Center if the application is accepted.

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

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

(R.C. 173.26)

Continuing law, unaltered by the act, requires a nursing home, residential care facility, adult care facility, adult foster home, or other specified long-term care facility to annually pay to the Ohio Department of Aging (ODA) a fee of \$6 for each bed the facility maintained for use by a resident during any part of the previous year. The funds are used to pay the costs of operating regional long-term care ombudsperson programs. The act requires ODA to assess a penalty on long-term care facilities that fail to pay the bed fee not later than 90 days after the deadline established by ODA rules. The penalty is an amount equal to a facility's total annual bed fee.

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

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

The Office of the State Long-Term Care Ombudsperson Program, through the State Long-Term Care Ombudsperson and the Regional Long-Term Care Ombudsperson Programs, must receive, investigate, and attempt to resolve complaints made by long-term care facility residents, recipients, sponsors, providers of long-term care, or any person acting on behalf of a resident or recipient relating to health, safety, civil rights, or residents' rights issues. Each complaint is assigned to a representative of the Office who is responsible for investigating and working with the parties to resolve the complaint. To carry out these responsibilities, a representative has the right to access long-term care facilities and community-based long-term care sites unescorted as reasonably necessary to investigate a complaint. The act permits ODA to assess a penalty, not to exceed \$500 for each violation, against a long-term care provider, other entity, or person employed by the provider or entity that denies a representative of the Program access to a long-term care facility or community-based long-term care site.

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

(R.C. 173.39 to 173.393)

The act requires ODA to certify providers of community-based long-term care services⁶ under programs ODA administers and, subject to certain exceptions, prohibits ODA from paying a person or government entity for providing community-based long-term care services under such a program unless the provider is certified to provide the services and provides the services. ODA may, however, pay a non-certified person or government entity for providing community-based long-term care services if the provider meets the terms of a contract that includes conditions of participation and service standards and the contract is not for Medicaid-funded services, other than services provided under the Program of All-Inclusive Care for the Elderly (PACE).⁷

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

Evaluation considerations

The act requires that ODA consider the following during the evaluation of a provider:

- (1) Provider's experience and financial responsibility;
- (2) Provider's ability to comply with standards of the community-based long-term care services program;
- (3) Provider's ability to meet the needs of individuals served;

⁶ "Community-based long-term care services" is defined in the Revised Code as health and social services provided to individuals in their homes or communities that include case management, home health care, homemaker and chore services, respite care, adult day care, home-delivered meals, personal care, and physical, occupation, or speech therapy (R.C. 173.14).

⁷ The Program of All-Inclusive Care for the Elderly (PACE) is a Medicaid component based on a managed care model through which certain sites provide frail, older adults with all of their needed health care and ancillary services in acute, subacute, institutional, and community settings.

- (4) Any other factor ODA considers relevant.

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

Disciplinary action and enforcement

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

ODA is authorized to take the following types of disciplinary actions:

- (1) Issue a written warning;
- (2) Require submission of a plan of correction;
- (3) Suspend referrals;
- (4) Remove clients;
- (5) Impose a fiscal sanction, such as a civil monetary penalty or an order that unearned funds be repaid;
- (6) Revoke the provider's certificate;
- (7) Impose another sanction.

The act requires ODA to hold hearings when there is a dispute between ODA or its designee and a provider concerning actions ODA or its designee takes or does not take regarding certification or disciplinary proceedings. This does not apply, however, if the disciplinary action is issuing a written warning or requiring the submission of a plan of correction.

Rules governing contracts and payments

ODA is required by the act to adopt rules concerning contracts between ODA, or ODA's designee, and persons and government entities regarding community-based long-term care services provided under a program ODA

administers. ODA must also adopt rules concerning ODA's payments for such services.

Long-term care consultation program

Background

The Revised Code provides for several different types of assessments of persons applying or intending to apply for admission to a nursing facility.⁸ The Ohio Department of Job and Family Services (ODJFS), or an agency designated by ODJFS, is authorized to assess any person who is not an applicant for or recipient of Medicaid who applies or intends to apply to a nursing facility to determine whether the person is in need of nursing facility services and whether an alternative source of long-term care is more appropriate for the person in meeting the person's physical, mental, and psychosocial needs than admission to the facility to which the person has applied (R.C. 5101.75 and 5101.751). In addition, ODJFS may require an applicant for or recipient of Medicaid who applies or intends to apply for admission to a nursing facility to undergo an assessment to determine whether the person needs the level of care provided by a nursing facility (R.C. 5101.754, 5111.204, and 5111.205).

Overview

In general, the act transfers from ODJFS to ODA, the authority to provide assessments of non-Medicaid recipients, modifies the nature of those assessments by including a "long-term care consultation,"⁹ and expands the population that must be given the assessments (R.C. 173.42 and 173.43 and repeal of R.C. 5101.751 and 5101.753). It also revises the law governing assessments of Medicaid recipients by ODJFS (R.C. 5111.204 and repeal of R.C. 5101.754 and 5111.205).

⁸ "Nursing facility" means a facility, or a distinct part of a facility, that is certified under the Medicaid program as a nursing facility and is not an intermediate care facility for the mentally retarded (R.C. 173.42(A)(3) (renumbered from R.C. 5101.75(A)(3), by reference to R.C. 5111.20(M)).

⁹ Under the act, "long-term care consultation" means the process used to provide services such as the provision of information about long-term care options and costs, the assessment of an individual's functional capabilities, and the conduct of all or part of the reviews, assessments, and determinations required under Medicaid and nursing facility law.

Duty to perform assessments

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

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

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

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

(R.C. 173.42(E), (F), and (J))

Under the act, the information provided through a long-term care consultation must be appropriate to the individual's needs and situation. The information must address the following:

- (1) The availability of any long-term care options open to the individual;
- (2) Sources and methods of both public and private payment for long-term care services;
- (3) Factors to consider when choosing among the available programs, services, and benefits;
- (4) Opportunities and methods for maximizing independence and self-reliance, including support services provided by the individual's family, friends, and community.

An individual's long-term care consultation may include an assessment of the individual's functional capabilities. It also may incorporate portions of

determinations required to be made by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities¹⁰ and may be provided concurrently with the assessment required to be made by ODJFS (see "Level-of-care assessments to receive Medicaid nursing facility services," below).

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

Individuals to be provided consultations; exemptions

(R.C. 173.42(G) and (I))

Under the act a long-term care consultation *may* be provided for nursing facility residents who have not applied and have not indicated an intention to apply for Medicaid. The purpose of these consultations is to determine continued need for nursing facility services, to provide information on alternative services, and to make referrals to alternative services.

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

- (1) Individuals who apply or indicate an intention to apply for admission to a nursing facility, regardless of the source of payment to be used for such care;
- (2) Residents of nursing facilities who apply or indicate an intention to apply for Medicaid;
- (3) Residents who are likely to "spend down" their resources within six months after admission to a level that qualifies them financially for Medicaid;

¹⁰ *The Department of Mental Health is required to determine--in accordance with federal law--whether a mentally ill individual seeking admission to a nursing facility requires the level of services provided by a nursing facility and, if the individual requires that level of services, whether the individual requires specialized services for mental illness (R.C. 5111.202 and 5119.061). The Department of Mental Retardation and Developmental Disabilities must make a similar determination with respect to an individual with mental retardation seeking admission to a nursing facility (R.C. 5123.021).*

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

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

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

(2) The act eliminates the exemption regarding a person placed in the nursing facility in order to provide temporary relief to the person's primary caregiver.¹¹

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

(4) The act exempts any individual who is to be transferred from another nursing facility.

(5) The act exempts any individual who is to be readmitted to a nursing facility following a period of hospitalization.

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

Time frame for completion of consultations

(R.C. 173.42(H))

When a long-term care consultation is required, the act requires it to be provided as follows:

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

¹¹ In a conforming change, the act eliminates the possible imposition of a fine for failing to notify ODJFS about the admission within the required time limits (R.C. 5101.75(J)(1), renumbered R.C. 173.42(M)).

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

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

Who may perform assessments

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

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

Authority to fine nursing facilities

(R.C. 173.42(K) and (M) and 5111.62)

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

Rulemaking

(R.C. 173.42(L))

Under the act, the Director of ODA is authorized to adopt any rules the Director considers necessary for the implementation and administration of the act's long-term care consultation provisions. The rules must be adopted in accordance with the Administrative Procedure Act and may specify all of the following:

- (1) Procedures for performing long-term care consultations;
- (2) Information to be provided through long-term care consultations regarding long-term care services that are available;
- (3) Criteria for identifying nursing facility residents who would benefit from the provision of a long-term care consultation;
- (4) Criteria under which an individual or the individual's representative may choose to forego participation in a long-term care consultation;
- (5) Criteria for exempting individuals from the long-term care consultation requirement;
- (6) Circumstances under which it may be appropriate to provide an individual's consultation after the individual's admission to a nursing facility.

Plan for providing home and community-based services

(R.C. 5101.573 (repealed))

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

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

Individuals to be assessed

(R.C. 5111.204(B))

Continuing law authorizes ODJFS to require an applicant for or recipient of Medicaid who applies or intends to apply for admission to a nursing facility to undergo an assessment to determine whether the applicant or recipient needs the level of care provided by a nursing facility.

The act expands this provision to also apply to an applicant for or recipient of Medicaid who resides in a nursing facility. In addition, the act specifies that the assessment may be performed concurrently with a long-term care consultation performed by ODA.

Who may perform assessments

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

Prior law permitted ODJFS to designate another agency to conduct assessments. Under the act, ODJFS may instead enter into contracts in the form of interagency agreements with one or more other state agencies to perform the assessments. The interagency agreements must be in accordance with Medicaid law provisions governing interagency agreements to administer one or more components of the Medicaid program. The interagency agreements must specify the responsibilities of each agency in the performance of the assessments.

Level of care determinations

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

The act adds an additional category of assessment: a level of care determination. Under the act, ODJFS or the contracting agency must provide a level of care determination based on the assessment as follows:

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

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

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

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

The act also removes a provision that provided for partial assessments to be conducted (existing R.C. 5111.204(C), (D), (E), and (H)).

Appeals

(R.C. 5111.204(D))

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

Rulemaking

(R.C. 5111.204(F))

The act revises law authorizing the Director of ODJFS to adopt rules to implement and administer the assessment provision as follows:

(1) It eliminates partial assessments.

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

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

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

Plan for providing home and community-based services

(R.C. 5111.205 (repealed))

The act repeals a provision under which ODJFS or the designated agency, whichever performed the assessment, could develop a plan for provision of home and community-based services to that person if the recommendation resulting

from the assessment was that home and community-based services were appropriate for the person assessed.

Nursing home and residential care facility survey

(R.C. 173.44 and 173.99(D))

The act authorizes ODA to conduct an annual survey of nursing homes and residential care facilities.¹² The survey is to include questions about capacity, occupancy, and private pay charges related to the facilities. ODA may work with an outside entity to conduct the survey and analyze the results. The results and analysis of the survey are to be made available to the General Assembly, other state agencies, nursing home and residential care facility providers, and the public.

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

Long-Term Care Consumer Guide

Background

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

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

¹² *Nursing homes and residential care facilities are licensed by the Ohio Department of Health for persons who need residential care due to age or infirmity. The difference is the level of care provided, with nursing homes providing skilled nursing care on a regular basis.*

The act

(R.C. 173.45 to 173.49)

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

Authorization to publish and content of Guide. The act requires ODA to develop and publish a guide to long-term care facilities for use by individuals considering long-term care facility admission and their families, friends, and advisors.¹³ This Ohio Long-Term Care Consumer Guide may be published in printed form or in electronic form for distribution over the Internet. The Guide may be developed as a continuation or modification of the rule-authorized Guide currently published by ODA.

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

- (1) Information regarding the facility's compliance with Ohio statutes and rules and federal statutes and regulations;
- (2) Information generated by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services from the quality measures developed as part of its nursing home quality initiative;
- (3) Results of customer satisfaction surveys;

¹³ "Long-term care facility" means a nursing home or a residential care facility.

"Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care. (R.C. 173.45(B), by reference to R.C. 3721.01(A)(6).)

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

(4) Any other information ODA specifies by rule.

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

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

(1) \$400 for the customer satisfaction survey of a long-term care facility that is a nursing home;

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

Fees paid by a long-term care facility that is a "nursing facility" must be reimbursed through the Medicaid Program.¹⁴

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

Rules. The act authorizes ODA to adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) to implement and administer the provisions relating to the annual surveys and the publication of the Long-Term Care Consumer Guide.

¹⁴ "Nursing facility" means a facility, or a distinct part of a facility, that is certified as a nursing facility under the Medicaid Program and is not an intermediate care facility for the mentally retarded. (R.C. 173.45(C), by reference to R.C. 5111.20(M).)

Transfer of PACE administrative duties

(R.C. 173.50; Section 490.03)

The Program of All-Inclusive Care for the Elderly (PACE) is a Medicaid component based on a managed care model through which certain sites provide frail, older adults with all of their needed health care and ancillary services in acute, subacute, institutional, and community settings. Enrollment is voluntary, and once enrolled, PACE becomes the sole source of all Medicare and Medicaid covered services and other items or medical, social, or rehabilitation services the PACE interdisciplinary team determines an enrollee needs. If a participant requires placement in a nursing home, PACE is responsible and accountable for the care and services provided and must regularly evaluate the participant's condition.¹⁵

To be eligible for PACE, a person must:

- Live in the service area of a PACE site;
- Qualify for Medicaid coverage under the institutional financial eligibility standards;
- Need an intermediate or skilled level of care;
- Be age 55 or older;
- Be willing to receive all care from PACE providers;
- Be able to remain safely in a community setting at the time of initial enrollment.¹⁶

Currently, Ohio has two PACE sites: TriHealth SeniorLink located in Cincinnati and Concordia Care in Cleveland Heights.¹⁷

¹⁵ *Press Release from the Centers for Medicare and Medicaid Services, "CMS Approves Concordia Care in Cleveland Heights, Ohio for Health Care Program for Frail Elderly," published Oct. 29, 2004, available at <http://www.cms.hhs.gov/media/press/release.asp?Counter=646> (visited Feb. 14, 2005).*

¹⁶ *ODJFS, Office of Ohio Health Plans Medicaid Fact Sheet 1.5. "PACE," published Aug. 2003, available at <http://jfs.ohio.gov/ohp/bcps/factsheets/pace.pdf>.*

¹⁷ *Id. TriHealth SeniorLink serves Hamilton County and parts of Warren, Butler, and Clermont counties. Concordia Care serves Cuyahoga County.*



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

As of February 15, 2005, the plan amendment was still under review by the Secretary. If the amendment is approved, an effective date of December 10, 2004, will apply.¹⁸ In anticipation of approval, the act requires ODA, pursuant to an interagency agreement, to carry out the day-to-day administration of PACE. ODA must carry out the administrative duties in accordance with the interagency agreement and all applicable federal laws, including the Social Security Amendments of 1965.¹⁹ The act grants rulemaking authority to ODA as long as the rules: (1) are authorized by rules adopted by ODJFS and (2) address only issues that are not already addressed by ODJFS rules for the PACE program. The act repeals Section 59.19 of Am. Sub. H.B. 95 of the 125th General Assembly; the Director of ODJFS has submitted the amendment request to the Secretary and therefore, this provision is no longer needed.

Transferring individuals from nursing facilities to PASSPORT

(Section 206.66.64)

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

The act then requires the administrator to determine whether PASSPORT is appropriate for the individual and whether the individual would rather receive PASSPORT services than continue to reside in a nursing facility. If the administrator determines that the individual should receive PASSPORT services, the administrator is required to contact ODA. Upon receipt of the notice from the administrator, ODA is required to approve the enrollment of the individual in the

¹⁸ Telephone interview with Matt Hobbs, Legislative Liaison, JFS (Feb. 15, 2005).

¹⁹ 79 Stat. 286 (1965), 42 U.S.C. 1396u-4.

PASSPORT Program regardless of that individual's place on the PASSPORT waiting list.

The act requires that the Director of ODJFS submit to the U.S. Secretary of Health and Human Services an amendment to the Medicaid waiver authorizing the PASSPORT Program if necessary to implement this provision.

The act also requires the Director to submit to the General Assembly by not later than December 31, 2006, a report regarding the number of individuals placed in the PASSPORT Program as a result of the Area Agencies on Aging determinations and the costs incurred and savings achieved as a result of the individuals' being placed in the PASSPORT Program under this provision.

PASSPORT Evaluation Panel

(Section 203.21.06)

The Governor vetoed a provision that would have created the PASSPORT Evaluation Panel to oversee the performance of an evaluation of the PASSPORT Program conducted by an independent contractor.²⁰ The act would have required the Panel to establish criteria to be used in selecting an independent contractor to evaluate the PASSPORT Program, accept and evaluate bids from potential contractors in accordance with the request for proposals process administered by the Department of Administrative Services, and select a contractor that meets the criteria established by the Panel.

The act would have required the independent contractor selected by the Panel to conduct the evaluation of the PASSPORT Program in accordance with specified criteria and issue to the Panel quarterly reports. Then, by not later than May 15, 2007, issue a final report of its findings. By not later than June 30, 2007, the Panel was to have approved a final report.

Aging and disability resource centers

(Section 203.21.09)

The Aging and Disability Resource Center Grant Initiative is a program, jointly offered by the federal Administration of Aging (AoA) and Centers for Medicare and Medicaid Services (CMS), that offers states the opportunity to establish Aging and Disability Resource Centers that provide public education, information, counseling, access to public programs and coordination with other

²⁰ *The act does, however, still include an appropriation for an evaluation of the PASSPORT Program.*

programs, and assistance with prospective planning to help people plan ahead for long-term services and support. AoA and CMS offer each state up to \$800,000 for a period of three years, to establish such centers and programs. To date, 24 states have received these grants.²¹

The act requires that ODA apply for the Aging and Disability Resource Center Grant Initiative and to create an Aging and Disability Resource Center beginning in fiscal year 2006 if the application is accepted. The act also requires that ODJFS endorse ODA's application to the extent required by the invitation to apply.

Ambulette service providers solely serving ODA

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

The act provides that ambulette service providers are not required to meet the requirements of the Medical Transportation Law during the period of time on any day the provider is solely serving ODA or ODA's designee.²² Under the act, the Medical Transportation Law applies to an ambulette service provider at any time the ambulette service provider is not solely serving ODA or ODA's designee.

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

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

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

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

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

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

²¹ <http://www.aoa.gov>

²² *Such ambulette service providers must, however, operate under ODA rules.*

- (c) Certificates of completion of CPR and first aid courses;
- (d) The results of a criminal records check.

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

The act requires that ODA enforce the above provisions and specifies that these provisions go into immediate effect.

DEPARTMENT OF AGRICULTURE

- Extends the sunset of the Family Farm Loan Program from October 15, 2005, to October 15, 2007.
- Combines the Animal Industry Laboratory Fund with the Laboratory Services Fund, names the combined fund the Animal Health and Food Safety Fund, and retains statutory provisions concerning sources and uses of money.
- Creates the Laboratory and Administrative Support Fund consisting of moneys received by the Department of Agriculture from auditorium rentals and other miscellaneous sources, and authorizes the Department to use moneys in the Fund to pay costs associated with any of the Department's programs.
- Expands the scope of background information that must be submitted to the Director of Agriculture by certain applicants for a permit to install or permit to operate a concentrated animal feeding facility.
- Exempts from the background information requirements a permit application that involves a small or medium concentrated animal feeding operation that must obtain a permit to install or permit to operate due to known water pollution issues.
- Changes the annual schedule for fertilizer-related licensure and registration from July 1 of one year through June 30 of the subsequent year to December 1 of one year through November 30 of the subsequent year.

- Changes the fertilizer tonnage report from a semiannual report to an annual report, and requires it to be submitted by November 30 each year.
- Increases the fertilizer inspection fee from 12¢ per ton to 25¢ per ton and from 13¢ per metric ton to 28¢ per metric ton, as applicable.
- Makes discretionary rather than mandatory the distribution of annual statements of fertilizer sales and the publishing of an annual report of an analysis of fertilizers inspected by the Director of Agriculture.
- Merges the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund and the Seed Fund to create the Commercial Feed, Fertilizer, Seed, and Lime Inspection and Laboratory Fund.
- Prohibits political subdivisions from regulating or enacting legislation relating to: (1) the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizer, or (2) the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed.
- Beginning on January 1, 2007, establishes in statute a pesticide registration and inspection fee of \$150 per product and a penalty fee of \$75 for late registration or distribution of an unregistered pesticide rather than allowing the Director to establish the amount of the fees by rule as in former law.
- Increases the semiannual commercial feed inspection fee from 10¢ per ton to 25¢ per ton, and increases the minimum payment from \$10 to \$25.
- Makes annual publishing of information concerning commercial feed by the Director discretionary rather than mandatory.
- Revises the definitions of "agricultural commodity handling" and "agricultural commodity handler" in the Agricultural Commodity Handlers Law.
- Changes the fee for the inspection of agricultural products and their conveyances under the Plant Pests Law from \$65 to an amount equal to the hourly rate of pay in the highest step in the pay range, including fringe benefits, of a plant pest control specialist multiplied by the number of hours worked by such a specialist in conducting an inspection.

- Changes the name of the Scale Certification Fund to the Metrology and Scale Certification Fund.
- Increases the cannery license fee and license renewal fee from \$100 to \$200.
- Increases the soft drink manufacturing or bottling license fee from \$100 to \$200, increases the out-of-state soft drink manufacturing or bottling registration fee from \$100 to \$200, and increases the license fee from \$50 to \$100 for the sale, use, or possession with intent to sell of any soda water syrup or extract or soft drink syrup to be used in making, drawing, or dispensing soda water or other soft drinks.
- Increases the fee for an annual license to operate a cold-storage warehouse from \$100 to \$200.
- Increases the fee for an annual license to operate a frozen food manufacturing facility, slaughterhouse, locker room, locker, chill room, sharp freezing room and facilities, or sharp freezing cabinet from \$25 to \$50.
- Authorizes the Director to issue a certificate of health and freesale to a food processing establishment, manufacturer of over-the-counter drugs, or manufacturer of cosmetics upon request for purposes of certifying that products have been produced and warehoused under sanitary conditions as determined through inspection, establishes a \$20 fee for the issuance of such a certificate, and requires the Director to deposit any such fees that are collected to the credit of the continuing Food Safety Fund.
- Extends through June 30, 2007, the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund.
- Increases the annual amusement ride permit fee from \$50 to \$150.
- Requires the Advisory Council on Amusement Ride Safety to prepare and submit a report by December 31, 2006, to the Governor, Speaker and Minority Leader of the House of Representatives, President and Minority Leader of the Senate, and Director of Agriculture concerning the Council's recommendations for alternative funding sources for the Amusement Ride Safety Program.

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

Family Farm Loan Program

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

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

Animal Health and Food Safety Fund

(R.C. 901.43)

Former law created the Animal Industry Laboratory Fund and the Laboratory Services Fund in the state treasury. The act combines those two funds and names the combined fund the Animal Health and Food Safety Fund. Under the act, moneys that were deposited into the two separate funds instead are required to be deposited into the combined fund. Those moneys are collected by the Director of Agriculture from fees generated: (1) by a laboratory service performed by the Department of Agriculture and related to the diseases of animals, (2) for the inspection and accreditation of laboratories and laboratory services related to the diseases of animals, (3) by a laboratory service performed by the consumer analytical laboratory, and (4) for the inspection and accreditation of laboratories and laboratory services not related to weights and measures or the diseases of animals.

Under the act, the Director may use moneys in the combined fund for the same purposes that were designated for moneys in the two separate funds. Those purposes are to pay the expenses necessary to operate the animal industry laboratory and the consumer analytical laboratory, including the purchase of supplies and equipment for both laboratories.

Creation of Laboratory and Administrative Support Fund

(R.C. 901.44)

The act creates the Laboratory and Administrative Support Fund in the state treasury. The Department of Agriculture must deposit the following moneys received by the Department to the credit of the Fund: payment for the rental of the Department's auditoriums by outside parties and reimbursement for related utility

expenses, laboratory fees that are not designated for deposit into another fund, and other miscellaneous moneys that are not designated for deposit into another fund. The Department may use moneys in the Fund to pay costs associated with any program of the Department as the Director of Agriculture sees fit.

Permits for concentrated animal feeding facilities

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

Introduction

Continuing law prohibits a person from modifying an existing or constructing a new concentrated animal feeding facility without first obtaining a permit to install from the Director of Agriculture. Likewise, continuing law prohibits a person from operating a concentrated animal feeding facility without a permit to operate issued by the Director. "Concentrated animal feeding facility" means an animal feeding facility with a total design capacity equal to or more than the specified number of animals in various categories. Those numbers range from 700 to 125,000 depending on the type of animals and, for certain types of animals, whether the facility uses a liquid manure handling system. "Animal feeding facility" generally means a lot, building, or structure where both of the following conditions are met: (1) agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of 45 days or more in any 12-month period, and (2) crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

Background information requirements

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

The act. The act makes two changes to the background information requirements. First, it expands the scope of the background information that must be submitted to the Director by an applicant for a permit to install or permit to

operate who has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application by requiring such an applicant to submit information concerning all animal feeding facilities of any size that the applicant has operated or is operating rather than information concerning only the concentrated animal feeding facilities that the applicant has operated or is operating as in prior law.

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

Fertilizer license, registration, and tonnage report schedule

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

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

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

submitted prior to the act's effective date, a license must be issued for a period beginning on July 1, 2005, and ending on November 30, 2005, and must expire on November 30, 2005.

Law unchanged by the act prohibits any person from distributing a specialty fertilizer in Ohio until it is registered by the manufacturer or distributor with the Department. Formerly, all registrations expired on June 30 of each year. The act instead provides that all registrations are valid for one year beginning on December 1 of a calendar year through November 30 of the following calendar year. With regard to registrations of a specialty fertilizer for which applications for the registration period beginning July 1, 2005, have been submitted prior to the act's effective date, a registration must be issued for the period beginning on July 1, 2005, and ending on November 30, 2005, and must expire on November 30, 2005.

Continuing law requires every licensee or registrant to file a statement that includes the number of net tons or metric tons of fertilizer distributed to nonlicensees or nonregistrants in Ohio by grade, packaged, bulk, dry, or liquid. Under prior law, the statements were semiannual and were due within 30 days after June 30, and within 30 days after December 31 of each calendar year. The act instead requires a tonnage report to be submitted to the Director annually instead of semiannually. Under the act, the tonnage report must be filed on or before November 30 of each calendar year and must include data from the period beginning on November 1 of the year preceding the year in which the report is due through October 31 of the year in which the report is due. A person who is required to submit a tonnage report within 30 days of June 30, 2005, under the former semiannual tonnage reporting system must submit the report by that date. However, the person also must submit a tonnage report by November 30, 2005 for the period beginning on July 1, 2005, and ending on October 31, 2005.

Fertilizer inspection fee

(R.C. 905.36)

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



Annual fertilizer sales statement

(R.C. 905.37)

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

Merger of funds

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

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

Prohibition against regulation of fertilizer and seed by political subdivisions

(R.C. 905.501 and 907.111)

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

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

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

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

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

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

(3) Require a person who has registered a legume inoculant under the Agricultural Seed Law to register that inoculant in a manner described in that Law or to satisfy any other condition except as provided by a statute or rule of this state or of the United States.

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

Pesticide registration and inspection fee

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

Under continuing law, no person may distribute a pesticide within Ohio unless the pesticide is registered with the Director. Law changed in part by the act requires that each applicant for a registration must pay a registration and inspection fee established by rule for each product name and brand registered for the company whose name appears on the label. If an applicant files a renewal of a registration after the deadline established by rule or if a person distributes an unregistered pesticide in Ohio, the applicant or person must pay a penalty fee established by rule for each product name and brand registered for the applicant. The act replaces the registration and inspection fee established by rule with a

statutory fee of \$150 and changes the penalty for late registration or distribution of an unregistered pesticide from an amount established by rule to a statutory fee of \$75. The changes are effective on January 1, 2007. Until that date, the fees established by rule remain in effect.²³

Under former law, the aggregate amount of the fees initially established by rule had to be designed to cover, but not exceed, the costs incurred by the Department of Agriculture in administering the Pesticides Law and could not be increased without the approval of the General Assembly. The act eliminates this provision.

Commercial feed inspection fee

(R.C. 923.44)

Under law changed in part by the act, the first distributor of a commercial feed must pay the Director of Agriculture a semiannual inspection fee at the rate of 10¢ per ton, with a minimum payment of \$10, on all commercial feeds distributed by him in this state. The act changes the fee to 25¢ per ton and establishes the minimum payment at \$25.

Commercial feed report

(R.C. 923.45)

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

Agricultural Commodity Handlers Law definitions

(R.C. 926.01)

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

²³ *Because the fees are established in statute under the act, any fee increase in the future will require a change in the law by the General Assembly.*

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

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

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

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

Under continuing law, "agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling. Former law specified that it did not include a person who did not handle agricultural commodities as a bailee and who purchased agricultural commodities in the following volumes:

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

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

Also under former law, a person who did not handle agricultural commodities as a bailee and who annually purchased 30,000 or fewer bushels of agricultural commodities from producers and 100,000 or fewer bushels of agricultural commodities from agricultural commodity handlers had to be considered to be an agricultural commodity handler if the combined annual volume of purchases from the producers and the agricultural commodity handlers exceeded 100,000 bushels.

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



Plant pests program fee

(R.C. 927.69)

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

Metrology and Scale Certification Fund

(R.C. 1327.511)

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

Cannery license fee

(R.C. 913.02)

Continuing law prohibits a person, firm, or corporation from engaging in the business of operating a cannery without obtaining a license for the operation of each cannery from the Director of Agriculture. In order to obtain a license, an application must be made on a form prescribed by the Director and must be accompanied by a fee. Under former law, the fee was \$100. Similarly, the fee for an annual license renewal was \$100. The act increases the cannery license fee and license renewal fee from \$100 to \$200.

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

(R.C. 913.23)

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

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

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

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

Cold-storage warehouse operation license fee

(R.C. 915.02)

Law retained in part by the act requires an applicant for an annual license to operate a cold-storage warehouse to pay a \$100 fee to the Director of Agriculture before the Director issues the license.²⁴ The act increases the fee to \$200.

Food locker establishment operation license fee

(R.C. 915.16)

Law largely unchanged by the act requires an applicant who wishes to operate an establishment in Ohio to obtain an annual license from the Department

²⁴ Under law unchanged by the act, "cold-storage warehouse" means a place artificially cooled by the employment of refrigerating machinery or ice or other means, in which articles of food are stored for 30 days or more at a temperature of 40° F, or lower (R.C. 915.01, not in the act).

of Agriculture and to pay a fee of \$25 for the license.²⁵ The act increases the fee to \$50.

Certificates of health and freesale

(R.C. 915.24 and 3715.04)

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

The act defines "certificate of health and freesale" as a document issued by the Director that certifies to states and countries receiving products that the products have been produced and warehoused in Ohio under sanitary conditions at a food processing establishment or at a place of business of a manufacturer of over-the-counter drugs or cosmetics, as applicable, that has been inspected by the Department of Agriculture. Other names of documents that are synonymous with "certificate of health and freesale" include, but are not limited to, "sanitary certificate of health and freesale," "certificate of origin," "certificate of freesale," "certificate of health and origin," "certificate of freesale, sanitary and purity," and "certificate of freesale, health and origin."

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

²⁵ Law unchanged by the act defines "establishment" as any business location or building of which any of the following facilities or operations are a part: a frozen food manufacturing facility, slaughterhouse, locker room, locker, chill room, sharp freezing room and facilities, or sharp freezing cabinet (R.C. 915.14, not in the act).

a processor of sorghum who processes sorghum juice when a minimum of 75% of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor; or a beekeeper who jars honey when a minimum of 75% of the honey is from that beekeeper's own hives.

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

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, 2005. The act extends the extra 2¢ earmarking through June 30, 2007.

Amusement rides

Permit fee

(R.C. 1711.53)

Under continuing law, the Department of Agriculture charges a fee for an annual amusement ride permit. Under former law, the fee was \$50. The act increases the permit fee to \$150.

Funding report by Advisory Council on Amusement Ride Safety

(R.C. 1711.52)

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

Requirements for electrical connections

(R.C. 1711.531)

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

- (1) Rated by the Underwriters Laboratories for service entrance applications;
- (2) Installed in compliance with the National Electrical Code;
- (3) Metered through a meter installed by the electric light company. "Electric light company" has the same meaning as in public utility law.

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

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

- (1) Rides that do not require electrical current; or
- (2) Rides that the Director exempts in rules the Director adopts.

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

STATE BOARD OF EXAMINERS OF ARCHITECTS

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

Imposition of fines against certificate holders

(R.C. 4703.15)

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

OHIO ATHLETIC COMMISSION

- Allows the Executive Director of the Ohio Athletic Commission (OAC), when authorized by the OAC, to issue, deny, suspend, or revoke permits to hold prize fights and public boxing or wrestling matches or exhibitions; to require a permit applicant to deposit a specified security before a public boxing match or exhibition; and to allow a permit holder to substitute contestants and hold a match or exhibition at an alternative site under specified conditions.
- Prohibits the OAC's Executive Director from issuing a permit or license to conduct a match or exhibition in a municipal corporation or township that prohibits such matches or exhibitions.

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

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

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

Commission determines the requirements are met, the Commission must issue a permit.

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

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

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

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

(R.C. 3773.40)

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

ATTORNEY GENERAL

- Authorizes the Bureau of Criminal Identification and Investigation to investigate criminal activity in Ohio related to the conduct of elections when requested to do so by the Secretary of State.
- Removes the Chief Justice of the Supreme Court from the Crime Victims Assistance Advisory Committee.
- Specifies that an unpaid amount payable by a student enrolled in a state institution of higher education must be certified to the Attorney General for collection within the later of 45 days after the amount is due or the tenth day after the beginning of the next academic session following the session for which the amount is payable.

- Would have specified when various classes of debts would have fallen due for the purpose of when they would have to have been certified to the Attorney General for collection (VETOED).
- Would have authorized the Attorney General to sell or otherwise transfer to any person claims arising from debts that were not paid within a specified period of time, that were certified to the Attorney General for collection, and that had become "final overdue claims" (VETOED).
- Provides that if a claim of the state is uncollectible and later sold, federal or state confidentiality laws applicable to information contained in the claim still apply.
- Requires the Auditor of State to review state agencies' compliance with statutory requirements for collecting debts owed to them.
- Allows fees for goods related to the Ohio Peace Officer Training Academy to be used for acquiring and equipping the Academy, in addition to General Assembly appropriations and gifts or grants as permitted under preexisting law.

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

(R.C. 109.54)

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

Removal of Chief Justice from the Crime Victims Assistance Advisory Committee

(R.C. 109.91)

The Crime Victims Assistance Advisory Committee established under preexisting law within the Office of the Attorney General: (1) advises the Attorney General's Crime Victims Assistance Office in determining crime and delinquency victim service needs and policies and in improving and exercising leadership in the quality of crime and delinquency victim programs and

(2) reviews and recommends to the Crime Victims Assistance Office the victim assistance programs that should be considered for the receipt of state financial assistance. Formerly, the Committee consisted of a chairperson appointed by the Attorney General, 15 members appointed by the Attorney General from specified categories of persons, and four *ex officio* nonvoting members. The *ex officio* nonvoting members were the Chief Justice of the Supreme Court, the Attorney General, a member of the Senate designated by the President of the Senate, and a member of the House of Representatives designated by the Speaker of the House. The act removes the Chief Justice from the Committee.

Debts owed to the state

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

(R.C. 131.02)

Under preexisting law, unchanged by the act except for the special rule described in the next sentence, whenever any amount owed to the state is not paid within 45 days after payment is due, the public official responsible for administering the law under which the debt arose must certify the amount due to the Attorney General for collection. The act provides a special rule for certification of an unpaid amount payable by a student enrolled in a state institution of higher education--under the act, that amount must be certified to the Attorney General for collection within the later of 45 days after the amount is due or the tenth day after the beginning of the next academic session following the session for which the amount is payable.

The act would have specified when various classes of debts would have fallen due for the purpose of when they would have had to have been certified to the Attorney General under the provisions described above, but the provisions containing the specification were vetoed by the Governor. Under the vetoed provisions of the act, a payment would have been due at whichever of the following times applied with respect to the debt:

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

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

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

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

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

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

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

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

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

Under the vetoed provisions, if more than one of the times specified in (1) to (9) above applied with respect to a debt, the debt would have fallen due for purposes of when they would have had to have been certified to the Attorney General for collection at the earliest of the applicable times.

Sale of final overdue claims to any person

(R.C. 131.022--vetoed)

The act would have enacted provisions that would have authorized the Attorney General to sell or otherwise transfer to any person certain claims arising from debts that are certified to the Attorney General for collection, pursuant to the provision described above in "**Time at which debts must be certified to the Attorney General for collection**," but the provisions were vetoed in their entirety. Under the vetoed provisions, the Attorney General could have sold or otherwise transferred such a claim to any person at any time after it had become a "final overdue claim." If the claim was to be sold, it could have been sold by private negotiated sale or at "public auction" conducted by the Attorney General or a designee, as the Attorney General believed was most likely to yield the most favorable return on the sale. The Attorney General could have consolidated any number of final overdue claims for sale under the provisions.

Under the vetoed provisions, not less than 60 days before first offering a final overdue claim for sale, the Attorney General would have been required to provide written notice, by ordinary mail, to the person owing the claim (the

debtor) at that person's last known mailing address. The notice would have been required to state the nature and amount of the claim and the manner in which the debtor could have contacted the Attorney General to arrange terms to pay the claim. The notice also would have been required to state that, if the debtor did not contact the Attorney General within 60 days after the date the notice was issued and arrange terms to pay the claim, then the claim would have been offered for sale to a private party for collection by that party by any legal means, the debtor would have been deemed to have been denied any right to seek and obtain a refund of any amount from which the claim arose if the applicable law otherwise allowed for such a refund; and the debtor would have been deemed to waive any right the debtor may have had to confidentiality of information regarding the claim to the extent it was provided under any other Revised Code section.

Under the vetoed provisions, upon the sale or transfer of a final overdue claim under the provisions, the claim would have become the property of the purchaser or transferee, and could have been sold or otherwise transferred to any other person or otherwise disposed of. The owner of the claim would have been entitled to all proceeds from the collection of the claim. Purchasers or transferees of a final overdue claim would have been subject to applicable laws governing collection of debts of the kind represented by the claim. Upon the sale or transfer of a final overdue claim, no refund could have been issued or paid to the debtor for any part of the amount from which the claim arose.

The vetoed provisions specified that, notwithstanding any other Revised Code provision, the Attorney General, solely for the purpose of selling or transferring a final overdue claim under the provisions, could have disclosed information about the debtor that otherwise would have been confidential under a Revised Code section, and the debtor would have had no right of action against such disclosure to the extent such a right was available under that section.

Finally, the vetoed provisions would have specified that the authority granted under the provisions would have been supplemental to the authority granted under the provision described above in **"Time at which debts must be certified to the Attorney General for collection."**

The vetoed provisions specified that, as used in those provisions:

(1) A "final overdue claim" would have been a claim that had been certified to the Attorney General, that had been "final" for at least one year, and for which no arrangements had been made for the payment thereof or, if such arrangements had been made, the debtor had failed to comply with the terms of the arrangement for more than 30 days. "Final overdue claim" would have included collection costs incurred with respect to such a claim and assessed by the Attorney General, interest accreting to the claim, and fees.

(2) "Final" would have meant a claim had been finalized under the law providing for the imposition or determination of the amount due, and any time provided for appeal of the amount, legality, or validity of the claim had expired without an appeal having been filed in the manner provided by law. "Final" would have included, but would not have been limited to, a final determination of the Tax Commissioner for which the time for appeal had expired without a notice of appeal having been filed.

Sale of claims due the state: confidentiality of information in claim

(R.C. 131.02)

Continuing law provides that if the Attorney General finds, after investigation, that any claim due and owing to the state is uncollectible, the Attorney General, with the consent of the chief officer of the agency reporting the claim may, among other things, sell, convey, or otherwise transfer the claim to one or more private entities for collection. The act provides that if information contained in a claim that is sold, conveyed, or transferred is confidential under federal law or a section of the Revised Code that implements a federal law governing confidentiality, that information remains subject to that law during and following the sale, conveyance, or transfer.

Review of state agencies' debt collection procedures

(Section 503.03)

The act requires that, sometime during 2005, the Auditor of State examine the compliance of each state agency with the requirements set forth in R.C. 131.02, as amended by the act (see "**Time at which debts must be certified to the Attorney General for collection**") with respect to collecting debts owed to them and certifying delinquent debts to the Attorney General for collection. Specifically, under the act, the Auditor must examine:

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

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

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

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

The act requires the Auditor, on or before March 31, 2006, to submit a written report on the Auditor's findings under the provisions described above to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Legislative Service Commission.

Funding the Ohio Peace Officer Training Academy

(R.C. 109.79)

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

OHIO STATE BARBER BOARD

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

Annual review of Barber Board's rules

(R.C. 4709.05)

Under continuing law, the Barber Board is required to adopt rules concerning sanitary conditions of barber shops and schools, the contents of licensing examinations for barbers, continuing education requirements for barbers,

licensing requirements for barber schools and teachers, requirements for barber students, and any other area the Barber Board determines appropriate. The act requires the Barber Board to review these rules annually in order to compare them with the rules adopted by the State Board of Cosmetology. If the Barber Board determines that the cosmetology rules would be beneficial to the barbering profession (including, but not limited to, rules concerning using career technical schools), the act requires the Barber Board to adopt rules for barbers similar to the cosmetology rules.

OFFICE OF BUDGET AND MANAGEMENT

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

User charges for OBM budgeting services

(R.C. 126.25)

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

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

Authority to transfer interest to GRF

(Section 312.06)

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

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

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

Financial disclosure statement filings

(R.C. 102.02)

Under continuing law, the 13 Capitol Square Review and Advisory Board (CSRAB) members are appointed for terms of three years. Among its other powers and duties, the CSRAB must employ and fix the compensation of an *executive director* for the CSRAB and other employees its considers necessary for the performance of its powers and duties.

The act includes among those persons required to file financial disclosure statements under the Ethics Law, the CSRAB's executive director and its members.

DEPARTMENT OF COMMERCE

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



- Allows the Superintendent of Industrial Compliance to (1) contract with a third party to conduct certification examinations of plumbing inspectors, (2) deny, suspend, or revoke certifications for inspectors, (3) examine inspectors under oath and examine their records, (4) enter into reciprocal certification agreements with other states and other agencies of this state, and (5) establish fees for the certification, recertification, and continuing education of inspectors.
- Repeals the prohibition preventing inspectors employed by the Department of Commerce from engaging in or having an interest in the plumbing business.
- Eliminates the Fire Marshal's Fireworks Training and Education Fund and requires the State Fire Marshal to use the State Fire Marshal's Fund instead for fireworks training and education.
- Removes statutorily specified requirements for distances between buildings used for fireworks and other buildings and roadways and instead requires the State Fire Marshal to adopt rules establishing distance separation requirements.
- Allows a fireworks wholesaler or manufacturer to expand its licensed premises to include up to two storage locations that are located on premises that are noncontiguous to the licensed premises if the wholesaler or manufacturer meets specified requirements.
- Modifies the application and administration of the Ohio Residential Building Code.
- Adds one member to the Board of Building Standards and to the Residential Construction Advisory Committee.
- Reduces the minimum price discount for wholesale purchases of spirituous liquor from 12.5% to 6% of the retail selling price of that liquor.
- Authorizes a D-6 (Sunday liquor sales) permit to be issued to any D liquor permit premises located at a ski area whether or not such sales have been approved in a Sunday sales local option liquor election.

Plumbing inspectors

Certifying and recertifying

(R.C. 3703.01 and 3703.10)

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

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

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

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

Reciprocal registration, licensure, or certification

(R.C. 3703.01)

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

Fees

(R.C. 3703.07)

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

Engaging in the plumbing business

(R.C. 3703.04)

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

Technical changes in the Plumbing Law

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

Prior law gave the Director of Commerce and the Department of Commerce the authority to act under the Plumbing Law. The act gives this authority specifically to the Superintendent of Industrial Compliance and the Division of Industrial Compliance.

Fire Marshal's Fireworks Training and Education Fund

(R.C. 3743.57)

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

Fireworks Law

(R.C. 3743.01, 3743.02, 3743.04, 3743.05, 3743.06, 3743.15, 3743.17, 3743.18, 3743.19, 3743.59, 3743.65, and 3743.75)

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

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

Under existing law, a licensed wholesaler of fireworks could transfer from one geographic location to another within the same municipal corporation or unincorporated area of the same township if, among other requirements, every building at the new location was no closer than (1) 2,000 feet to any building used for the sale, storage, or manufacturing of fireworks that does not belong to the licensee, (2) 1,000 feet from any property line or structure that does not belong to the licensee requesting the transfer, (3) 300 feet to any highway or railroad, (4) 100 feet to any building used for the storage of explosives or fireworks by the licensee, and (5) 50 feet to any factory building owned or used by the licensee.

The act removes these distance restrictions and requires the State Fire Marshal to adopt rules concerning the required distances between buildings and structures used in the manufacturing, storage, or sale of fireworks and occupied residential and nonresidential buildings or structures, railroads, highways, or any additional buildings. However, these new requirements the State Fire Marshal adopts do not apply to buildings that were erected on or before May 30, 1986, and that were legally being used for fireworks activities under authority of a valid license issued by the Fire Marshal as of December 1, 1990. The distance restrictions contained in prior law also did not apply to these buildings.

Expansion or contraction of licensed premises

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



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

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

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

Under the act, a licensee who obtains approval for expansion must prohibit public access to all storage locations used by the licensee. The State Fire Marshal

must adopt rules establishing acceptable measures a manufacturer or wholesaler must use to prohibit public access.

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

Variances to requirements of Fireworks Law and license moratorium

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

Under continuing law, the State Fire Marshal may not issue wholesaler or manufacturer licenses between June 29, 2001 and December 15, 2008 to a person for particular fireworks plant for a manufacturer's license or for a particular location for a wholesaler's license. The act prohibits the State Fire Marshal, notwithstanding the authority granted to the Fire Marshal to grant variances as described above, from granting variances, waivers, or exclusions in order to allow the State Fire Marshal to grant (1) manufacturers or wholesalers licenses within the prohibited time frame, (2) approval for any expansion or contraction without meeting the necessary requirements, or (3) approval for storage locations on noncontiguous real estate without meeting the necessary requirements, all as described above. For purposes of this provision, the act defines "person" to include any person or entity that acquires possession of a manufacturer's or wholesaler's license by transfer of possession of the license in any manner that is in accordance with the Fireworks Law and approved by the state Fire Marshal. The act defines "particular location" to include a licensed premises and any approved storage location.

Residential Building Code

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

The act clarifies that the *local residential building regulations* a board of county commissioners adopts under existing law may be enforced within the unincorporated area of the county or within districts the Board of Building Standards establishes in any part of the unincorporated area. The act also clarifies



that a board of county commissioners may enforce an *existing structures code* pertaining to the repair and continued maintenance of residential structures within districts established by the Board in the unincorporated area of the county.

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

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

The act specifies that the Board of Building Appeals has no authority to hear any case based on the Residential Building Code or to grant any variance to that Code.

Minimum price discount for spirituous liquor wholesale purchases

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

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

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

(R.C. 4303.182)

Law unchanged by the act prohibits the sale of intoxicating liquor after 2:30 a.m. on Sunday unless the liquor is sold under the authority of a permit that authorizes Sunday sale (R.C. 4301.22(D)--not in the act). The D-6 permit



authorizes the Sunday sale of intoxicating liquor and generally is issued only to the holder of an existing liquor permit for sales at the permit holder's premises if Sunday liquor sales have been approved in a local option election on sales at that premises or in the area where the premises is located.

Continuing law, however, does authorize the issuance of a D-6 permit under certain conditions to an existing permit holder for the permit holder's premises even though Sunday liquor sales have not been approved in a local option election on sales at that premises or in the area where the premises is located.²⁶ The act additionally requires a D-6 permit to be issued to the holder of any D permit for a premises that is licensed as a retail food service operation or retail food establishment that is authorized to have sales of on-premises consumption and that is located at a ski area, to allow sales under the D-6 permit between the hours of 10 a.m. and midnight on Sunday, whether or not those sales have been approved in a local option election on sales at that premises or in the area where the premises is located. "Ski area" is defined by the act as all the ski slopes, ski trails, and passenger tramways that are administered or operated as a single enterprise within Ohio, provided that the passenger tramway operator at that area is registered under the Skiing Safety Law.

OFFICE OF CONSUMERS' COUNSEL

- Negates the Consumers' Counsel's authority to operate a telephone call center for consumer complaints, requires the Counsel to forward telephoned complaints against utilities to the Public Utilities Commission call center, and requires that the Commission provide the Counsel with information regarding residential consumer complaints.
- Changes the minimum annual assessment against a public utility for maintaining the Office of the Consumers' Counsel from \$50 to \$100.
- Beginning in 2006, revises the schedule by which the Consumers' Counsel collects the assessments from utilities.

²⁶ *Liquor permit premises located at certain publicly owned airports, certain hotels and motels, certain sports facilities, the Ohio Historical Society area, the State Fairgrounds, certain outdoor performing arts centers, certain publicly owned golf courses, and national professional sports museums may be issued a D-6 permit without approval in a Sunday sales local option election.*

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

Call center for consumer complaints against public utilities

(R.C. 4905.261 and 4911.021)

Committee testimony indicated that both the Public Utilities Commission (PUCO) and the Consumers' Counsel receive and respond to telephoned consumer's public utilities complaints. The act expressly requires the PUCO to operate a telephone call center for consumer complaints against any public utility by any person, firm, or corporation.

The act negates the Consumers' Counsel authority to operate a telephone call center for consumer complaints. The Consumers' Counsel must forward any calls received concerning consumer complaints to the PUCO's call center. However, the PUCO must expeditiously provide the Consumers' Counsel with all information received in the operation of the call center concerning residential consumer complaints and with any materials produced in the operation of the call center concerning residential consumer complaints. If technology is reasonably available, the act requires the PUCO to provide the Consumers' Counsel with real-time access to the PUCO's residential consumer complaint information.

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

(R.C. 4911.18)

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

Under prior law, a final computation of the assessment imposed a \$50 assessment on each utility whose assessment under the initial computation equaled \$50 or less. The act changes the minimum yearly assessment against each utility

from \$50 to \$100. The utility payments are deposited in the state treasury to the credit of the Consumers' Counsel Operating Fund.

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

Under prior law, at the beginning of each fiscal year, the Director of Budget and Management transferred an amount from the General Revenue Fund (GRF) to the Consumers' Counsel Operating Fund so the Consumers' Counsel could maintain operations during the first four months of the fiscal year. The amount transferred by the Director was required to be transferred back into the GRF from the Consumers' Counsel Operating Fund by December 31. Under the act, beginning in calendar year 2006, these obligations no longer apply because under the act's new assessment schedule the Consumers' Counsel Operating Fund will receive sufficient revenue from the initial assessment payment to operate at the beginning of each fiscal year.

CONTROLLING BOARD

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

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

(R.C. 4117.10)

Under the Public Employee Collective Bargaining Law (Chapter 4117.) any collective bargaining agreement concluded between a public employer and an



employee organization must be submitted to the "legislative body" of the public employer for ratification. Under prior law, in the case of the state, the legislative body was the General Assembly. The act replaces the General Assembly with the Controlling Board as the entity responsible to accept or reject both of the following: (1) a collective bargaining agreement between a state public employer and an exclusive representative and (2) a request for the funds necessary to implement the agreement. Under continuing law, a collective bargaining agreement and a request for funds must be accepted or rejected as a whole.

OHIO STATE BOARD OF COSMETOLOGY

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

State Board of Cosmetology office location

(R.C. 4713.02)

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

OFFICE OF CRIMINAL JUSTICE SERVICES

- Abolishes the Office of Criminal Justice Services and generally transfers its personnel and functions to, and creates, the Division of Criminal Justice Services in the Department of Public Safety.
- Creates the Federal Justice Programs Fund in the state treasury for the deposit of all money from certain federal grants that fund local criminal justice programs.



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

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

Prior law created the Office of Criminal Justice Services with a director appointed by the Governor and employees appointed by the director. The Office served as the state criminal justice services agency and performed criminal justice system planning in Ohio; collected, analyzed, and correlated information and data concerning the criminal justice system in Ohio, assisted state and local governmental agencies and entities in dealing with criminal justice services planning and problems, administered federal and state programs and funds related to criminal justice, reported to the General Assembly, Attorney General, and Governor on ways to improve the criminal and juvenile justice systems, and performed other tasks related to criminal justice services. (R.C. 181.52.)

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

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

Creation of Federal Justice Programs Fund

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

The act creates the Federal Justice Programs Fund in the state treasury for the deposit of all money from federal grants that require that the money be deposited into an interest-bearing fund, that are intended to provide funding to local criminal justice programs, and that require that investment earnings be

distributed for program purposes. The act requires that all investment earnings of the Fund be credited to the Fund and distributed in accordance with the terms of the grant under which the money is received.

OHIO CULTURAL FACILITIES COMMISSION

- Increases to 12 the total membership of, to nine the voting membership of, and to five voting members the quorum requirement for action by, the Ohio Cultural Facilities Commission.
- Provides that the Director of Budget and Management, when requested by the Commission, can transfer to the Commission's administration fund, the premium paid on any bonds issued on behalf of the Commission and credited to the Cultural and Sports Facilities Building Fund that exceed federal arbitrage rebate requirements.
- Clarifies that the Treasurer of State may issue obligations to refund certain bonds previously issued to pay the costs of capital facilities for the Ohio Cultural Facilities Commission.

Composition

(R.C. 3383.02)

The Ohio Cultural Facilities Commission engages in and provides for the development, performance, and presentation or making available of culture and professional sports and athletics to the public in Ohio, and the provision of training or education in culture. Under prior law, the Commission consisted of ten members, seven of whom were voting members appointed by the Governor, with the Senate's advice and consent, from different geographical regions of the state.²⁷ Not more than four of the voting members could be affiliated with the same political party. Former law specified that four voting members constituted a quorum for the conduct of Commission business and that the affirmative vote of four voting members was necessary for approval of any action taken by the Commission.

²⁷ *Under continuing law, the nonvoting members are the Ohio Arts Council's staff director, a Senate member appointed by the President of the Senate, and a House member appointed by the Speaker of the House of Representatives.*



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

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

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

Cultural Facilities Commission bond premium

(R.C. 3383.09)

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

Under ongoing law, the Commission's Chairperson or Executive Director can request the Director of Budget and Management to transfer to the Ohio Cultural Facilities Commission Administration Fund, investment earnings credited to the Cultural and Sports Facilities Building Fund that exceed the amount required to meet estimated federal arbitrage rebate requirements.²⁸ The act adds that the Commission's Chairperson or Executive Director can also request the Director of Budget and Management to transfer to the Commission's administration fund, the premium paid on any bonds issued on behalf of the Commission and credited to the Cultural and Sports Facilities Building Fund that exceed the federal arbitrage rebate requirements.

²⁸ Generally, the Internal Revenue Code requires a state to pay the federal government the earnings it receives from investing proceeds of tax-exempt bonds in higher-yielding taxable securities.

Refunding Ohio Cultural Facilities Commission obligations

(R.C. 154.11)

Continuing law permits the Treasurer of State to authorize and issue obligations for the refunding, including funding and retirement, of any obligations previously issued under the Public Facilities Commission Law. Obligations for Ohio Cultural Facilities Commission capital facilities are issued under that Law. But, prior to the enactment of Am. Sub. H.B. 16 of the 126th General Assembly, they were issued under the Ohio Building Authority Law. The act clarifies that the Treasurer's authority to issue refunding obligations extends to bonds and notes issued under the Building Authority Law to pay costs of capital facilities leased to the Ohio Cultural Facilities Commission (which was known as the Ohio Arts and Sports Facilities Commission until renamed by Am. Sub. H.B. 516 of the 125th General Assembly).

DEPARTMENT OF DEVELOPMENT

- Requires the Director of Development to establish the Alternative Fuel Transportation Grant Program.
- Makes permanent the Shovel Ready Sites Program in the Department of Development (formerly established as a pilot program in uncodified law) to provide grants for projects to port authorities and development entities approved by the Director, specifies the purposes for which the grants may be used, and requires the Director to adopt rules establishing procedures and requirements necessary for the administration of the Program.
- Modifies the law authorizing agreements that provide for payments to municipal corporations and counties to attract federal jobs by authorizing municipal corporations and counties to enter into similar agreements for the purpose of retaining jobs at existing facilities recommended for closure or realignment to the Base Realignment and Closure Commission in the United States Department of Defense.
- Specifies that six members, rather than four, of the total membership of ten constitutes a quorum of the Development Financing Advisory Council and that an affirmative vote of six members is necessary for any action taken by the Council.



- Increases the state's contribution to loan guarantee reserve pools under the Capital Access Loan Program.
- Modifies eligibility for, the permissible purposes of, and the approval process for loans made under the Minority Business Development Loan Program, including the existing Bond Guarantee Program; increases the size of the Minority Development Financing Advisory Board from nine to ten members; and modifies the Board's procedural requirements.
- Increases from 50% to 80% the total amount of a project that the Director may guarantee in connection with the loan guarantees for the general Small Businesses Program and expands the purposes for which these loan guarantees may be made.
- Revises the law governing the awarding of grants by the Director from the Industrial Site Improvement Fund, and revises the definitions of "eligible county" and "commercial or industrial areas" for purposes of awarding grants from the Fund.
- Would have prohibited the Third Frontier Commission from making grants or loans for any activities involving stem cell research with human embryonic tissue (VETOED).

Alternative Fuel Transportation Grant Program

(R.C. 122.075)

The act provides that for the purpose of improving the air quality in this state, the Director of Development must establish the Alternative Fuel Transportation Grant Program. "Alternative fuel" means blended biodiesel or blended gasoline. ("Blended biodiesel" is diesel fuel containing at least 20% biodiesel by volume and "blended gasoline" is gasoline containing at least 85% ethanol by volume.)²⁹ Under the program, the Director may make grants to businesses, nonprofit organizations, public school systems, or local governments

²⁹ Under the act, "biodiesel" means a mono-alkylester combustible liquid fuel that is derived from vegetable oils or animal fats, or any combination of those reagents, and that meets American Society for Testing and Materials specification D6751-03a for biodiesel fuel (B100) blend stock distillate fuels.

for the purchase and installation of alternative fuel refueling facilities and for the purchase and use of alternative fuel.

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

- (1) An application form and procedures governing the grant application process;
- (2) A procedure for prioritizing the award of grants under the program;
- (3) A requirement that the maximum grant for the purchase and installation of an alternative fuel refueling facility be no more than 50% of the facility cost;
- (4) A requirement that the maximum grant for the purchase of alternative fuel be no more than 50% of the incremental cost of the fuel ("incremental cost" means either of the following: the difference in cost between blended gasoline and gasoline containing 10% or less ethanol at the time the blended gasoline is purchased, or the difference in cost between blended biodiesel and diesel fuel containing 2% or less biodiesel at the time the blended biodiesel is purchased);
- (5) Any other criteria, procedures, or guidelines that the Director determines are necessary to administer the program.

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

Shovel Ready Sites Program

(R.C. 122.083)

The act makes permanent the Department of Development's Shovel Ready Sites Pilot Program, which provides grants for projects to port authorities and development entities approved by the Director of Development. The act specifies that the grants may be used to pay the costs of any or all of the following: (1) acquisition of property, including options, (2) preparation of sites, including brownfield clean-up activities, (3) construction of road, water, telecommunication, and utility infrastructure, and (4) payment of professional fees the amount of which cannot exceed 20% of the grant amount for a project. In addition, the act requires the Director to adopt rules in accordance with the Administrative Procedure Act that establish procedures and requirements necessary for the administration of the program, including a requirement that a recipient of a grant

enter into an agreement with the Director governing the use of the grant. Finally, the act creates in the state treasury the Shovel Ready Sites Fund consisting of money appropriated to it. The Fund must be used solely for the purposes of the Shovel Ready Sites Program.

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

(R.C. 122.18)

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

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

Continuing law provides that a landlord that proposes a project to create new jobs in Ohio may apply to the authority to enter into such an agreement for annual payments. The act adds that a landlord also may apply to the authority to enter into such an agreement when the landlord proposes a project to retain jobs in Ohio at an existing facility recommended for closure or realignment to the Base

Realignment and Closure Commission. The act retains a requirement that the Director of Development prescribe the form of the application.

Continuing law authorizes the Tax Credit Authority, after receipt of an application, to enter into an agreement with the landlord for annual payments if it determines all of the following:

- (1) The project will create new jobs in this state;
- (2) The project is economically sound and will benefit the people of this state by increasing opportunities for employment and strengthening the economy of this state; and
- (3) Receiving the annual payments will be a major factor in the decision of the landlord and tenant to go forward with the project.

The act adds in item (1) that the determination can be that the project will retain jobs at a facility recommended for closure or realignment to the Base Realignment and Closure Commission.

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

- (1) A description of the project that is the subject of the agreement;
- (2) The term of the agreement, which cannot exceed 20 years;
- (3) Based on the estimated new income tax revenue to be derived from the facility at the time the agreement is entered into, provision for a guaranteed payment to the landlord commencing with the issuance by the landlord of any bonds or other forms of financing for the construction of the facility and continuing for the term approved by the authority;
- (4) Provision for offsets to the state of the annual payment in years in which the annual payment is greater than the guaranteed payment, of amounts previously paid by the state to the landlord in excess of the new income tax revenue by reason of the guaranteed payment;
- (5) A specific method for determining how many new employees are employed during a year;
- (6) A requirement that the landlord annually must obtain from the tenant and report to the Director the number of new employees, the new income tax revenue withheld in connection with the new employees, and any other information the Director needs to perform the Director's duties; and



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

The act applies these requirements to agreements that it authorizes for projects that will retain jobs at facilities that are recommended for closure or realignment as discussed above. For that purpose, it adds references to retained income tax revenue to items (3) and (4) above and, in item (6), adds that the landlord's report must include the number of retained employees and the retained income tax revenue withheld in connection with the retained employees if applicable.

Development Financing Advisory Council quorum

(R.C. 122.40)

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

Increased state contributions under the Capital Access Loan Program

(R.C. 122.603)

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

Under prior law, upon receiving a certification from a financial institution that it made a loan under the program in a specified amount, the Director of Development disbursed to the financial institution an amount equal to 10% of the

principal amount of the loan for deposit into the financial institution's reserve pool. The act increases the amount of the state's contribution with respect to the first three loans made by a participating financial institution. Under the act, with respect to the first three loans, the state contributes 50%, as opposed to 10%, of the principal amount of each loan. Any loans made thereafter with respect to that financial institution would receive a 10% contribution.

Minority business development loan and bond guarantee programs

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

Generally under continuing law, the Minority Business Development Loan Program involves the Minority Development Financing Advisory Board advising the Director of Development in determining assistance to minority businesses, including approval of loan applications. This law includes specifications about the composition of the Board and its duties; duties of the Director; and eligibility for, purposes of, and the approval process for loans made under the Program. Continuing law also permits the Director to guarantee bonds executed by sureties for minority businesses and certain enterprises.

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

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

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

The act also increases the size of the Minority Development Financing Advisory Board from nine to ten members, with the Director or the Director's designee being added as a voting member of the Board. The act increases from five to six the number of Board members necessary to constitute a quorum and from five to six the number of affirmative votes necessary for any action to be taken by the Board.

Loan Guarantees for Small Businesses Program

(R.C. 122.77)

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

Industrial Site Improvement Fund

(R.C. 122.95 and 122.951)

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

For the purposes of this program, law that is modified by the act defines "eligible county" to mean any of the following:

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

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

(3) A county that has a population of less than 100,000 according to the most recent federal decennial census and in which 350 or more residents of the



county were, during the most recently completed calendar year, permanently or temporarily terminated from a private sector employment position for any reason not reflecting discredit on the employee; or

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

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

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

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

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

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



Restrictions on Third Frontier Commission funding embryonic stem cell research

(R.C. 184.02)

The Governor vetoed a provision that would have prohibited the Third Frontier Commission from making any grants or loans to individuals, public agencies, private companies or organizations, or joint ventures for any activities involving stem cell research with human embryonic tissue.

DEPARTMENT OF EDUCATION

I. School Funding

Base-cost funding

- Establishes a "building blocks" methodology reflecting determinations that the base cost of providing an adequate education comprises the costs of base classroom teachers, other personnel support, and nonpersonnel support.
- Prescribes that the base-cost formula amount is \$5,283 for fiscal year 2006 and \$5,403 for fiscal year 2007.
- Requires the payment of four additional base funding supplements to school districts (not joint vocational school districts) for large-group academic intervention services, professional development, and data-based decision making.
- Phases out the "cost-of-doing-business factor" in calculating base-cost funding for school districts, community schools, and county MR/DD boards.
- Guarantees that each district's state base-cost payment will be no lower than its FY 2005 state aggregate or per pupil base cost payment, whichever is less.
- Requires the Department of Education to publish on its web site a spreadsheet for each school district that indicates the components of the district's "building blocks" funds.

- Requires the Superintendent of Public Instruction to adopt a rule authorizing the Superintendent to issue orders to school districts under academic watch or in a state of academic emergency that could require the districts to periodically report on their spending of state building blocks funds, require the districts to establish separate accounts for each of their state building block payments, or have the state Superintendent direct the spending of the districts' state building block funds.
- Applies the funding formula changes to county MR/DD boards, community schools, open enrollment, and the Post-Secondary Enrollment Options Program.

Add-backs to the 23-mill charge-off

- Beginning in fiscal year 2007, adds back to a school district's 23-mill charge-off the aggregate value of real property that was exempted pursuant to an ordinance or a resolution that created an incentive district or an agreement that exempted property as part of urban renewal projects, community redevelopment programs (for blighted areas), community reinvestment programs, enterprise zones, local railroad operations, or programs for the remediation of contaminated property.
- "Grandfathers-in" certain projects in incentive districts so that their value is not included in the charge-off.
- Requires that school district treasurers report to the Director of Development the total amount of payments the district received during the preceding tax year under any agreement whereby it is compensated for tax revenue foregone as a result of property tax exemptions granted under an ordinance or a resolution creating an incentive district.

Guarantee/transitional aid

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

- Provides additional state transitional aid in fiscal years 2006 and 2007 to prevent any joint vocational school district's funding from being less than it was in the previous fiscal year.

Twice annual ADM reports

- Requires each school district to certify its formula ADM and other related membership information for funding purposes twice each year, once for the first full week of October, as under continuing law, and again for the third full week of February.
- Authorizes a school district to include in its formula ADM certified in February students included in the October certification who have since received their high school diplomas.
- In making payments to school districts, requires the Department of Education to use the October certification of formula ADM for the months of July through December and the average of the October and February certifications for the months of January through June.
- Requires the Superintendent of Public Instruction to recommend a plan to the General Assembly whereby a second annual formula ADM count may be used to guarantee a minimum level of state funding in the next fiscal year.
- Permits the Auditor of State to conduct annual random audits of average daily membership data reported by select school districts.

Parity aid

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

Poverty-based assistance

- Renames the Disadvantaged Pupil Impact Aid subsidy as "Poverty-Based Assistance" and expands the subsidy to include additional payments for (1) academic intervention services, (2) services to limited-English proficient students, (3) teacher professional development, (4) dropout prevention in the Big-Eight districts, and (5) community outreach programs in the Urban-21 districts.

Transportation funding

- Specifies that, instead of using the established transportation formula, each school district's payment for regular student transportation in fiscal years 2006 and 2007 increase 2% from the previous fiscal year.
- For fiscal years 2006 and 2007, specifies that the local share of the calculated amount for transportation is 2% greater than in the previous year (instead of as prescribed under the transportation subsidy formula) for purposes of computing a district's charge-off supplement and excess cost supplement.
- Requires the Department of Education to recommend a new student transportation payment formula by July 1, 2006.

Special education funding

- Specifies that the weights for special education funding continue to be paid at 90% in fiscal years 2006 and 2007.
- Increases the catastrophic threshold amount for special education and related services to \$26,500 for categories two through five (from \$25,700 under prior law) and to \$31,800 for category six (from \$30,800 under prior law).
- Maintains for fiscal years 2006 and 2007 the \$30,000 personnel allowance for calculating the subsidy for speech-language pathology services.
- Specifies that the existing authorization for an additional subsidy for transporting disabled students refers to all students with disabilities (instead of only "developmentally handicapped" students as under prior law).
- Requires the Department of Education, by May 30, 2006 and 2007, to report to the Office of Budget and Management the amount of state and local shares of special education and related services weighted funding calculated for each school district and the amount of federal special education funds passed through to each district.
- Permits a joint vocational school district to decline having the Department of Education transfer payments to it from the state accounts

of city, exempted village, and local school districts or community schools for the excess cost of providing special education and related services.

- Requires the payment of weighted special education funding (instead of unit funding) to state institutions for services to school-age children.
- Authorizes a school district, in the case of a disabled child placed in a residential "home" by court order, to charge the child's district of residence for the excess cost of providing special education and related services for that child.
- Authorizes the Department of Education to deduct and credit the excess cost calculated for any child receiving services from a school district other than the child's district of residence.
- Changes the date for determining the eligibility of children for handicapped preschool units based on their age from December 1 to the date on which the children must have attained the minimum age to start school in their school districts (August 1 or September 30).
- Clarifies that related services units for handicapped preschool children be approved for any statutorily defined "related services."
- Requires the Department of Education by July 1 of each year (beginning in 2006) to electronically report to the General Assembly the number of handicapped preschool children served the previous fiscal year, disaggregated according to category of handicap.

Other school funding provisions

- Specifies that the personnel allowance for the GRADS subsidy, for programs for pregnant and parenting students, remains at \$47,555 in fiscal years 2006 and 2007 (same as provided for fiscal years 2004 and 2005 under prior law).
- Specifies that a recalculation of a school district's taxable valuation (due to refunded taxes or other changes in real property, public utility property, or tangible personal property valuation) affecting the district's amount of state aid apply to the district's "SF-3 payment."
- Requires that adjustments to a district's state aid relative to changes in its taxable value be paid on or before July 31 of the following fiscal year

(instead of June 30 of the year in which the adjustment is made as under prior law).

- Repeals the statute authorizing Equity Aid.
- Adds, to the revenue considered to be received by a school district for purposes of calculating "gap aid," revenues a school district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost due to the act's phase-out of the tangible personal property tax.
- Establishes a new, three-year payment to phase out (rather than immediately terminate) "gap aid" subsidies to school districts that pass property tax or income tax levies in tax year 2005 or thereafter.
- Specifies that the subsidy for bus purchases to school districts for transporting special education and nonpublic students, and to county MR/DD boards for transporting special education students, be based on a per pupil allocation (instead of 100% of the net cost of acquiring buses as under prior law).
- Requires the Department of Education, upon request of the Department of Job and Family Services (ODJFS), to pay to ODJFS the nonfederal share of Medicaid reimbursements made to a school district and to deduct the amount of that payment from the district's state aid account.
- Increases from \$250 to \$275, the per pupil cap on reimbursement payments to chartered nonpublic schools for mandated administrative expenses.

II. Scholarship Programs

- Establishes the Educational Choice Scholarship Pilot Program, beginning in the 2006-2007 school year, to provide scholarships for students assigned to school buildings that have been in academic emergency for three consecutive years to attend chartered nonpublic schools.
- Directs the Department of Education to award not more than 14,000 scholarships in fiscal year 2007 under the Educational Choice Scholarship Pilot Program.



- Excludes students who are eligible to participate in the Cleveland Scholarship Pilot Program from participation in the Educational Choice Scholarship Pilot Program.
- Expands eligibility for scholarships under the Cleveland Scholarship Pilot Program to eleventh and twelfth graders.
- Codifies a long-standing practice to allow new students to enter the Cleveland Scholarship Pilot Program in any of grades K to 8.
- Beginning in fiscal year 2007, increases the base scholarship amount under the Cleveland Scholarship Pilot Program to \$3,450 for grades K through 12 (from \$3,000 for grades K through 8 and \$2,700 for grades 9 through 12).
- Beginning in fiscal year 2007, sets at \$400 the maximum tutorial assistance grant amount under the Cleveland Scholarship Pilot Program (instead of 20% of the average basic scholarship amount).
- Reauthorizes the Pilot Project Special Education Scholarship Program for fiscal years 2006 and 2007, under which the parent of an identified autistic child may receive an annual scholarship of up to \$20,000 (which is deducted from the account of the child's resident school district) to pay for the child's IEP services at a private or another public provider.

III. Community Schools

Caps and limits on sponsors

- Establishes a statewide cap until July 1, 2007, on the number of conversion Internet- or computer-based community schools ("e-schools") and start-up community schools sponsored by the school districts in which they are located of 30 more than the number of such schools that were open for operation as of May 1, 2005.
- Extends the former statewide cap on the number of start-up community schools sponsored by other entities for two years to July 1, 2007, and increases the cap for that period (from the former 225) to 30 more than the number of such schools that were open for operation as of May 1, 2005.

- Requires the Department of Education, within 30 days after the act's effective date, to conduct a lottery to select the additional 30 community schools allowed to open under each of the statewide caps.
- Permits a community school to open in excess of the statewide caps if the school's daily operations are managed by an "operator" hired by the school's governing authority.
- Limits an operator to managing one community school in excess of the statewide caps for each community school managed by the operator on the date those caps are reached that has a performance rating of excellent, effective, or continuous improvement.
- Creates a moratorium on the establishment of new eschools, including conversion schools, between May 1, 2005, and the effective date of any standards enacted by the General Assembly governing the operation of e-schools.
- Prohibits a community school that opens for operation after May 1, 2005, from operating from a residential facility that receives and cares for children until July 1, 2007.
- Requires community school sponsors approved on or after the act's effective date to have a record of financial responsibility and successful implementation of educational programs.
- Specifies that if an entity that sponsors or operates out-of-state schools seeks approval to sponsor community schools in Ohio, at least one of those out-of-state schools must perform better than or comparably to Ohio schools in academic watch.
- Limits entities that sponsor community schools as follows: (1) to 50 schools for new sponsors and existing sponsors that sponsored 50 or fewer schools that were open for operation as of May 1, 2005, (2) to the number of schools the entity sponsored that were open for operation as of May 1, 2005, for existing sponsors that sponsored 51 to 75 schools that were open as of that date, and (3) until June 30, 2006, to the number of schools the entity sponsored that were open for operation as of May 1, 2005, and after June 30, 2006, to 75 schools, for existing sponsors that sponsored more than 75 schools that were open as of May 1, 2005.

- Requires the limit of a sponsor with more than 50 schools open for operation as of May 1, 2005, to be reduced by one for each of the sponsor's schools that permanently closes, until the sponsor has 50 schools.
- Directs the Department of Education to assist schools in excess of a sponsor's limit to secure new sponsors and, if a school is unable to find a new sponsor, temporarily to assume sponsorship of the school itself.

Contract and opening deadlines

- Requires the contract between the sponsor and governing authority of a new community school to be adopted by March 15 prior to the school year in which the school will open.
- Specifies that a community school's contract with its sponsor is void if the school (1) fails to open within one year after the contract is adopted or (2) permanently closes prior to the contract's expiration.
- Requires community schools, other than those schools solely serving dropouts, to open by September 30 each year beginning in the 2006-2007 school year.

Enrollment of students

- Specifies that a student is considered enrolled in a community school for state funding purposes beginning on the later of (1) the date on which the student actually enrolls in the school or (2) 30 days prior to the date on which the student is entered into the Education Management Information System (EMIS).
- Eliminates the 30-day period formerly granted to community schools to withdraw a student who has missed 105 consecutive hours of the school's learning opportunities without excuse.

E-schools

- Specifies that any time an e-school student spends participating in learning opportunities over 10 hours within a 24-hour period does not count toward the minimum number of hours of learning opportunities the school must provide to the student.

- Requires each e-school to retain an affiliation with at least one full-time teacher licensed by the State Board of Education.
- Requires that each student enrolled in an e-school be assigned to at least one teacher of record (who is a teacher responsible for the overall academic development and achievement of a student).
- Specifies that no teacher of record employed by an e-school may be primarily responsible for the academic development and achievement of more than 125 students.
- Requires e-schools to provide a location within 50 miles of a student's residence at which the student can take the state achievement tests and diagnostic assessments.
- Requires an e-school, or a school district-operated school that primarily uses a computer-based instructional method, to withdraw a student who fails to participate in the spring administration of a grade-level achievement test for two consecutive school years.
- Prohibits an e-school or a district-operated school that primarily uses a computer-based instructional method from receiving state funds for any student who has been withdrawn from such a school for failure to take achievement tests and requires the student's parent to pay tuition in the amount of the withheld funds.
- Requires each e-school to submit to its sponsor an annual plan for the provision of special education and related services to disabled students enrolled in the school.
- Requires any community school that is not an e-school but provides nonclassroom-based learning opportunities via an Internet- or computer-based instructional method to supply a computer to each student who must participate in those learning opportunities from home if (1) those learning opportunities constitute a "significant" portion of the total learning opportunities provided to the student by the school or are not supplemental in nature or (2) the student does not have a computer to use at home.

Sanctions for poorly performing community schools

- Requires, beginning in the 2006-2007 school year, fall and spring administrations of reading and math assessments approved by the Department of Education to students in grades 1 to 12 who are enrolled in a community school that (1) is in continuous improvement, academic watch, or academic emergency, (2) has not been open for at least two school years, or (3) does not have a performance rating based on achievement test data.
- Imposes sanctions on academic watch and academic emergency community schools and community schools whose performance rating is not based on achievement test data, if the schools do not make expected gains in student achievement established by the State Board of Education.

State payments to community schools

- Prohibits e-schools from receiving vocational education weighted funding, parity aid, or poverty-based assistance, including funding for all-day kindergarten.
- Requires e-schools, beginning in fiscal year 2007, to spend at least the per pupil amount designated for base classroom teachers on instruction, including (1) teachers, (2) curriculum, (3) academic materials other than computers, and (4) other designated instructional purposes.
- Requires an e-school not in compliance with the minimum instructional expenditures to pay a fine equal to the greater of 5% of the school's state funding or the amount it underspent on instruction, unless the Department of Education waives the fine for implementation of a compliance plan.
- Beginning in fiscal year 2007, eliminates the provision that guarantees each community school at least as much in aggregate state base cost and special education funding for students receiving special education services as the school received in fiscal year 1999.
- Clarifies the procedure for paying state funds to a community school for an enrolled student who lives in a residential facility.

- Continues a state subsidy in fiscal years 2006 and 2007 for community schools in which at least 50% of the enrolled students are identified as severe behavior handicapped.

Other community school provisions

- Directs the Department of Education to adopt procedures for closing a community school.
- Excludes student performance data from a conversion community school that primarily enrolls students at risk of dropping out of high school in calculating the sponsoring school district's academic performance for the district report card.
- Requires a community school sponsor to submit an annual report to the Department of Education describing the special education and related services provided to the school's students during the previous fiscal year and the school's expenditures for those services.
- Permits the establishment of a community school to simultaneously serve autistic students and non-disabled students.
- Makes other changes to the community school law.

IV. Other Education Programs

Statewide testing

- Beginning in the 2006-2007 school year, requires the spring administration of elementary-level achievement tests generally to be no earlier than Monday of the week of May 1, instead of in mid-March.
- Authorizes the State Board of Education to designate a testing period one week earlier than the general testing period for administration of achievement tests to limited English proficient students.
- Requires alternate assessments for special education students to be completed and submitted to the test scoring company by April 1 of the school year in which the assessment is given.
- Beginning in the 2006-2007 school year, requires student scores on the spring achievement tests to be returned to school districts by June 15.

- Requires a student's data verification code to be included on each achievement test administered to the student.
- Permits companies hired to score the achievement tests to have access to personally identifiable student information.
- Requires the Department of Education and contracting entities to use the data verification codes to protect student privacy when conducting studies and research projects.
- Specifies that the initial administration of each elementary-level achievement test is a public record and that at least 40% of the questions used to compute student scores on subsequent administrations of those tests are public records.
- Specifies that only the spring administration of the Ohio Graduation Test (OGT) is a public record.
- Eliminates the requirement for the State Board of Education to adopt diagnostic assessments for grades 3 through 8, except for third grade writing.

Early childhood education programs

- Eliminates the Title IV-A Head Start and Head Start Plus programs.
- Establishes the Early Learning Initiative, paid for with TANF funds and jointly administered by the Department of Education and the Department of Job and Family Services, to provide early learning programs and child care to TANF-eligible children (some provisions VETOED).
- Establishes a GRF-funded program to support early childhood education (preschool) programs offered by school districts and educational service centers to serve preschool children whose families earn up to 200% of the federal poverty guidelines.
- Prohibits specified early childhood education programs from receiving state funds in fiscal years 2006 and 2007 unless at least 50% of the program's teachers are working toward an associate degree; beginning in fiscal year 2008, prohibits any such program from receiving state funds unless all of the program's teachers have an associate degree; and beginning in fiscal year 2011, prohibits any such program from receiving

state funds unless at least 50% of the program's teachers have earned a bachelor's degree.

- Permits an accredited Montessori program that is licensed as a preschool program to combine three- to five-year-old preschool children with kindergarteners.

Reading grants

- Repeals authorization for the OhioReads community reading grants program.
- Eliminates the OhioReads Office within the Department of Education.
- Requires the Department of Education to award reading intervention grants to public schools to engage volunteers to work with struggling students, to improve reading outcomes in low-performing schools, and to close the achievement gap.

Post-Secondary Enrollment Options Program

- Restricts participation in the Post-Secondary Enrollment Options Program to Ohio residents.
- Would have specified that the purpose of the Post-Secondary Enrollment Options Program is to provide enriched education opportunities that are beyond the opportunities offered by the students' high school (VETOED).
- Requires the student or the student's parent to reimburse state funds paid to a college for a course in which the student does not attain a passing final grade in the course.
- Permits students who participate under Option A to elect to receive high school credit, as well as college credit, for successfully completed college courses.

School district RIF authority

- Allows boards of education and governing boards of educational service centers to reduce the number of teachers for financial reasons.

- Expands the reasons for which these boards may reduce the number of nonteaching employees to include the same reasons the board would reduce the number of teachers.
- Specifies that the changes for school districts' and educational service centers' authority to make reductions in force prevail over conflicting provisions of future collective bargaining agreements.
- Permits the board of education of a local or exempted village school district (non-Civil Service school districts) to terminate the positions of transportation employees for reasons of economy and efficiency and to contract with an independent agent to provide student transportation services, as long as specified conditions are satisfied.

Other education provisions

- After July 1, 2007, requires the Superintendent of Public Instruction to establish an academic distress commission for each academic emergency school district that has failed to make adequate yearly progress for four or more consecutive years; and grants the commission authority over specified personnel, management, and budgetary decisions, which authority may not be negated by collective bargaining.
- Restores to the board of a school district for which an academic distress commission has been established any management rights and responsibilities specified in the Collective Bargaining Law that the district board relinquished in a collective bargaining agreement entered into after September 29, 2005 (the provision's effective date).
- Prohibits the creation of a new city or local school district proposed by the State Board of Education without the approval of the General Assembly.
- Authorizes school districts to contract with an employee who would be called an "internal auditor," and requires that anyone employed specifically as an "internal auditor" hold a valid permit to practice as a certified public accountant or public accountant.
- Codifies and makes permanent an existing provision of uncodified law that generally requires a disabled student to undergo, at private expense,

a comprehensive eye examination by a licensed optometrist or physician within three months after beginning special education services.

- Prohibits future collective bargaining agreements from barring school district use of volunteers when they assist with functions not required to be performed by a licensed, permitted, or certificated employee.
- Until December 31, 2005, permits a school district to dispose of real property by private sale in support of economic development when certain conditions are satisfied. The private sale would be in lieu of offering the property at public auction, or to a community school, or to another government entity, as otherwise required under current law.
- Prohibits the Department of Education from lowering the performance rating of a school district or building from the prior year solely because one student subgroup did not make adequate yearly progress.
- Creates the Ohio Center for Autism and Low Incidence (OCALI) within the Department of Education to administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and other disabilities.
- Limits eligibility for the annual stipend paid to teachers certified by the National Board for Professional Teaching Standards to the ten-year period of the teacher's initial certification.
- Requires the State Board of Education to adopt a model student acceleration policy, which each school district must either adopt or adopt one of its own for implementation beginning in the 2006-2007 school year.
- Specifically authorizes joint vocational school districts and educational service centers (in addition to city, local, and exempted village school districts under current law) to provide latchkey programs.
- Authorizes school districts and educational service centers to expend money from their general funds for latchkey programs.
- Eliminates the requirement that school districts produce annual "spending plans" (detailing all revenues available for appropriation and expected



expenditures, including outstanding debts) to be filed with the Department of Education.

- Eliminates the requirement that school districts file their amended certificates of estimated resources with the Department of Education.
- Eliminates requirements that the Department of Education file monthly and annual statistical reports with the Governor, the Senate, the House of Representatives, the Auditor of State, and the Legislative Service Commission.
- Codifies a long-standing requirement that city, local, and exempted village school districts transport their high school pupils who attend career-technical classes at another district, including a joint vocational school district, from the student's high school to the career-technical program.
- Requires a school district that is in fiscal watch or fiscal emergency status to update its five-year projection of revenues and expenditures once the Superintendent of Public Instruction approves the district's financial plan or financial recovery plan.
- Exempts a school district from making otherwise required deposits into certain "set-aside" funds while in a fiscal emergency period and excuses it from eliminating deficits in those funds that accrued in prior years.
- Permits a school district in fiscal watch or fiscal caution to apply to the Superintendent of Public Instruction for an annual waiver from the requirements to deposit money into the set-aside funds, which may be granted if the district demonstrates that making those deposits will result in an undue financial hardship.
- Permits any school district not in fiscal emergency, watch, or caution to apply once every three fiscal years for a waiver from the requirements to deposit money into the set-aside funds, which may be granted if the district demonstrates that the deposits will necessitate reduction or elimination of a program critical to the academic success of students and that no reasonable alternatives exist.
- Prohibits a school district, or individual school operated by a district, from operating without a charter issued by the State Board of Education.

- Requires the State Board of Education, upon considering the charter of a new school district, to require the party proposing the new district to submit a map, certified by the county auditor, showing the boundaries of the new district.
- Establishes a legislative committee to study the feasibility and economic impact of school district consolidation.
- Establishes the School Physical Fitness and Wellness Advisory Council to develop, by December 31, 2005, best practices guidelines and evaluation strategies for school districts regarding nutrition education, physical activity for students, and student wellness.

I. School Funding

Background to school funding formula changes

Base-cost and categorical funding

State operating funding for school districts is divided primarily into two types: base-cost funding and categorical funding. Base-cost funding is the prescribed minimum amount of money needed per pupil to pay the expenses that all school districts experience on a somewhat even basis. These expenses include compensation for teachers of curriculum courses, textbooks, janitorial and clerical services, administrative functions, and support services such as libraries and guidance counseling.

Categorical funding, on the other hand, is calculated for expenses that vary from district to district due to special circumstances, such as the demographics of the student population or the geography of the district. Some categorical funding, namely the cost-of-doing-business factor and some adjustments to property value, is actually built into the base-cost formula. But most categorical funding is paid separately from the base cost, including: additional weighted funding for special education and vocational education services, gifted education funding, aid for districts with a significant proportion of low-income students, and transportation funding.

Equalization

State funds are used in the school funding formula to "equalize" school district revenues. Equalization means using state money to ensure that all districts, regardless of property wealth, have an equal amount of combined state and local

revenues to spend for necessary services. In an equalized system, poor districts receive more state money than wealthy districts in order to guarantee the established minimum amount for all districts.

The school funding system essentially equalizes 23 mills of property tax for base-cost funding. It does this by providing sufficient state money to each school district to ensure that, if all districts in the state levied exactly 23 effective mills, they all would have the same per pupil amount of base-cost money to spend.³⁰

Base-cost formula

To determine a district's funding for base-cost expenses, prior law set forth the following formula:

(Base-cost "formula amount" x cost-of-doing-business factor x the "formula ADM") minus (0.023 times "recognized valuation")

Where:

(a) The **"formula amount"** is the statutorily prescribed minimum amount for each student.

(b) The **cost-of-doing-business factor** varied by county from 1.000 (for the lowest-cost county) to 1.075 (for the highest-cost county) as prescribed by statute based on a comparison of labor costs for each county. The act phases out the cost-of-doing-business factor by reducing its total range from 7.5% to 5% in fiscal year 2006 and 2.5% in fiscal year 2007. Under prior law and the act, Gallia County is the lowest-cost county, and Hamilton County is the highest-cost county.

(c) **"Formula ADM"** is the number of full-time-equivalent students reported as attending school in the district during the first full week of October. In addition to the traditional October student count, the act prescribes a second formula ADM count for the third full week in February, which for purposes of payments during the second half of the fiscal year is to be averaged with the count of the previous October.

(d) The district's **"recognized valuation"** is the value of taxable property in the district, adjusted to diminish the sudden effect of increases due to triennial appraisal updates.

(e) **"0.023"** represents **23 mills** of property taxation, which is the "charge off" presumed to be the district's contribution of the total base cost. In other

³⁰ *One mill produces \$1 of tax revenue for every \$1,000 of taxable property valuation.*

words, an amount equal to 23 mills worth of the district's adjusted taxable value will be subtracted from the total amount of base cost calculated for the district.

Beginning in fiscal year 2007, the act applies 23 mills not only against the sum of a district's recognized valuation but also the valuation of certain tax exempt property in the district.

State share percentage

As a result of the base-cost formula, a "state share percentage" is computed. It is the percentage of the total base-cost amount supplied by the state after the charge-off is deducted. That state share percentage is subtracted from many, but not all, of the separately calculated categorical funding amounts to determine how much of those amounts is presumed to be the responsibility of the district. Continuing law limits a district's share of the aggregate of its calculated special education, vocational education, and transportation funding to 3.3 mills beyond the 23-mill charge off. The state, then, pays the remainder of the district's calculated aggregate amount of funding for those three categories with a subsidy known as the "excess cost supplement."

How the base-cost "formula amount" was established under prior law

Since 1998, the General Assembly utilized an explicit methodology for determining the base cost of an adequate education, from which was derived the formula amount. That methodology relied on the premise that, all other things being equal, most school districts should be able to achieve satisfactory performance if they have available to them the average amount of funds spent by those districts that have met the standard for satisfactory performance.³¹ The latest standard for that performance, adopted by the General Assembly in 2001, was meeting in fiscal year 1999 at least 20 of the 27 state academic performance standards. In essence, the General Assembly developed an "expenditure model" by examining the average per pupil expenditures of school districts deemed to be performing satisfactorily. From the initial group of these districts, it eliminated "outriders" (the top and bottom 5% in property wealth and personal income) and arrived at 127 districts to include in the model. The base cost derived from analyzing that group's fiscal year 1999 expenditures was \$4,814 per pupil for fiscal year 2002. That amount was increased by an inflation factor of 2.8% for fiscal year 2003 and 2.2% for fiscal years 2004 and 2005.

³¹ *The fact that "all other things are not equal" is the rationale behind the "categorical" funding provided for school districts with greater needs for transportation funding, special education services, and similar requirements that vary from district to district.*

New "building blocks" methodology

(R.C. 3317.012(A) and (B))

The act prescribes a new method for determining the base cost of an adequate education relying on "building blocks," which the act describes as the following:

- (1) Base classroom teachers;
- (2) Other personnel support, including "additional teachers, such as music, arts, and physical education teachers funded by state, local, or federal funds or other funds that are above the base cost funding level," and other school personnel including administrators; and
- (3) Nonpersonnel support.

The act further states that this model reflects the General Assembly's "policy decisions" that the cost of base classroom teachers rests on two "policy variables." Those variables are (1) the number of students per base classroom teacher necessary for an adequate education and (2) the average compensation for a base classroom teacher necessary for an adequate education. In addition, under the model the General Assembly then decides the amount of other personnel support necessary for an adequate education, which is to increase from year to year by the same percentage as the General Assembly increases the average compensation for base classroom teachers. Finally, the General Assembly decides the nonpersonnel costs necessary for an adequate education, which are inflated from year to year using the projected inflationary measure for the Gross Domestic Product Deflator (all items) prepared by the U.S. Bureau of Labor Statistics.

Using this new model, the act specifies that, for fiscal years 2006 and 2007, the General Assembly has resolved that a ratio of one base classroom teacher for every 20 students is necessary for an adequate education. It then prescribes that the average compensation for base classroom teachers in fiscal year 2006 is \$53,680, and in fiscal year 2007 is \$54,941. Both of these amounts include the value of fringe benefits. Based on a ratio of 20 students per base classroom teacher, these average compensation amounts equal \$2,684 per pupil in fiscal year 2006 and \$2,747 per pupil in fiscal year 2007.

The act then specifies that the General Assembly has made a policy decision that the per pupil cost of salary and benefits of other personnel support is \$1,807 in fiscal year 2006. Based on the percentage increase for the average compensation of base classroom teachers from fiscal year 2006 to fiscal year

2007, the act prescribes that the fiscal year 2007 per pupil cost of other personnel support is \$1,850.

Finally, the act specifies that the General Assembly has made a policy decision that the per pupil cost of nonpersonnel support is \$792 in fiscal year 2006 and \$806 in fiscal year 2007, the latter amount reflecting the inflationary measure for the Gross Domestic Product Deflator (all items) projected for those years of 1.80%.

FY 2006 and FY 2007 base-cost formula amount

(R.C. 3317.012(B)(4))

Based on the determinations described under the "building blocks" methodology statement, the act prescribes that the per pupil base-cost amount is \$5,283 in fiscal year 2006 and \$5,403 in fiscal year 2007.

Base funding supplements

(R.C. 3317.012(C))

In addition to the base-cost amount, the act prescribes four new "base funding supplements," which are to be calculated for each school district, except joint vocational school districts. One of these supplements is phased in, as described below. The supplements are as follows:

Base Funding Supplements--Per Pupil Amounts

Supplement	FY 2006	FY 2007
Large-group academic intervention	\$25.00	\$25.50
Professional development	\$3.50	\$10.73
Data-based decision making	\$5.28	\$5.40
Professional development for data-based decision making	\$6.22	\$6.36
Total	\$40.00	\$47.99

(1) The base funding supplement for **"large-group academic intervention"** for all students is calculated as follows:

"Large-group intervention units" x 25 hours x hourly rate



Where:

(a) "Large-group intervention units" equals the district's formula ADM divided by 20; and

(b) "Hourly rate" equals \$20.00 in fiscal year 2006 and \$20.40 in fiscal year 2007.

In other words, the supplement provides funding for 25 hours of intervention for every student at a 20:1 student-to-teacher ratio and an hourly rate of \$20 in the first year of the biennium and \$20.40 in the second year.

(2) The base funding supplement for **professional development** is phased in as follows:

District's teacher factor x 4.5% x formula amount x phase-in percentage

Where:

(a) For each school district, the district's "teacher factor" is the district's formula ADM divided by 17; and

(b) "Phase-in percentage" equals 25% in fiscal year 2006 and 75% in fiscal year 2007.

(3) The base funding supplement for "**data-based decision making**" is calculated according to the following formula:

0.1% x formula amount x formula ADM

This subsidy presumably is to help defray a district's cost in examining student performance data to determine the appropriate courses of action for students.³²

(4) Finally, the base funding supplement for **professional development regarding data-based decision making** is calculated as follows:

³² R.C. 3302.021 (not in the act) requires the Department of Education to develop and implement a "value added progress dimension" to measure individual student performance over the entire course of a student's primary and secondary education. It is to be based on a model developed by a non-profit organization led by the Ohio business community. The Ohio Business Roundtable's "Battelle For Kids" has developed such a model program. Presumably, a district could use some or all of its supplement to pay for services from that or similar programs.

(20% of the district's "teacher factor" x 8% of the formula amount) + (the district's "principal factor" x 8% of the formula amount)

A district's "teacher factor" is its formula ADM divided by 17 (meaning the formula assumes one teacher per 17 students). A district's "principal factor" is its formula ADM divided by 340 (meaning the formula assumes one principal per 340 students, or per 20 teachers). Presumably, this supplement is to help districts defray the cost related to professional development for just its data-based decision-making activities.

Cost-of-doing-business factor

(R.C. 3317.02(N))

As noted above, under prior law, the cost-of-doing-business factor applied a multiple of between 1.000 to 1.075 (7.5% extra maximum for the highest cost county) to the formula amount to account for the labor costs of the county in which the district is located. The act phases out the cost-of-doing-business factor by prescribing new ranges by county that vary from 1.000 to 1.050 (5% maximum) for fiscal year 2006 and from 1.000 to 1.025 (2.5% maximum) for fiscal year 2007.

Add-backs to the 23-mill charge-off

(R.C. 3317.02(X), 3317.021, 3317.022(A), and 3317.0216(A)(2))

Because of incentive district property tax exemptions

Continuing law requires that the Tax Commissioner certify to the Department of Education certain information for each city, exempted village, and local school district, including the taxable value of real and tangible personal property in the school district subject to taxation in the preceding year, to be used to compute the district's 23-mill charge-off for the base-cost formula.

The act provides that, beginning in fiscal year 2007, the Tax Commissioner also must certify the aggregate value of real property in each school district that is exempted from taxation pursuant to an ordinance or resolution creating an incentive district (see "**Incentive districts**," below), as indicated on the list of exempted property for the preceding tax year, and as if the property had been assessed for taxation that year. The reported value must exclude payments in lieu of taxes provided to the school district by a municipal corporation, county, or township that adopted the ordinance or resolution. The amount certified by the Commissioner, which the act defines as the "property exemption value," must be added back to the 23-mill charge-off. The effect is the school district must include, in the taxable value of property in the district, the value of property in an



incentive district that is exempted from taxation, causing an increase in property value and a decrease in state aid.

Grandfathered projects not included. The act "grandfathers-in" certain types of "projects" (the development activities undertaken on parcels of property in an incentive district) by excluding from the school district's property exemption value the following property that was exempted from taxation pursuant to an ordinance or a resolution creating an incentive district, so that the value of the exempted property is *not* added back to the 23-mill charge-off:

(1) The aggregate value of improvements to parcels of real property in the school district exempted from taxation, if (a) the ordinance or resolution is adopted prior to January 1, 2006, and (b) the legislative authority of the municipal corporation or board of township trustees or county commissioners, prior to January 1, 2006, executes a contract or agreement with a developer, whether for-profit or not-for-profit, with respect to the development of a project undertaken or to be undertaken and identified in the ordinance or resolution, and upon which parcels the project is being, or will be, undertaken.

(2) The product determined by multiplying (a) the aggregate value of the improvements to parcels of real property in the school district exempted from taxation pursuant to any such ordinance or resolution, minus the aggregate value of any improvement excluded pursuant to (1), above, by (b) a fraction, the numerator of which is the difference between (i) the amount of anticipated revenue the school district would have received in the preceding fiscal year if the real property exempted from taxation had not been exempted, and (ii) the aggregate amount of payments and other compensation received in the preceding fiscal year by the school district pursuant to all agreements between the school district and the legislative authority or board that were entered into in relation to the ordinance or resolution, and the denominator of which is the amount of anticipated revenue the school district would have received in the preceding fiscal year if the real property exempted from taxation had not been exempted.

(3) The aggregate value of improvements to parcels of real property in the school district exempted from taxation pursuant to any such ordinance or resolution, if and to the extent that, on or before April 1, 2006, the fiscal officer of the municipal corporation that adopted the ordinance, or of the township or county that adopted the resolution, certifies and provides appropriate supporting documentation to the Tax Commissioner and the Director of Development that, based on hold-harmless provisions in any agreement between the school district and the legislative authority or board that was entered into on or before June 1, 2005, the ability or obligation of the municipal corporation, township, or county to repay bonds, notes, or other financial obligations issued or entered into prior to January 1, 2006, will be impaired, including obligations to or of any other body

corporate and politic with whom the legislative authority or board has entered into an agreement pertaining to the use of service payments derived from the improvements exempted.

(4) The aggregate value of improvements to parcels of real property in the school district exempted from taxation pursuant to any such ordinance or resolution adopted prior to January 1, 2006, in a municipal corporation with a population that exceeds 100,000, that includes a major employment center, and that is adjacent to historically distressed neighborhoods, if the legislative authority of the municipal corporation or the board of township trustees or county commissioners that exempted the property prepares an economic analysis that demonstrates that all taxes generated within the incentive district accruing to the state by reason of improvements constructed within the district during its existence exceed the amount of base-cost funds the state pays the school district that are attributed to the property's exemption from the school district's recognized valuation. The analysis must be submitted to and approved by the Department of Development prior to January 1, 2006, and the Department cannot unreasonably withhold approval. The approval permits use of the aggregate value of the improvements for the life of the incentive district as designated in the ordinance or resolution creating it.

(5) The aggregate value of improvements to parcels of real property in the school district exempted from taxation under any such ordinance or resolution adopted before January 1, 2006, if service payments have been pledged to be used for mixed-use riverfront entertainment development in any county with a population that exceeds 600,000.

(6) The aggregate value of improvements to parcels of real property in the school district exempted from taxation under any such ordinance or resolution, if, prior to January 1, 2006, service payments have been pledged for a designated transportation capacity project approved by the Transportation Review Advisory Council.

(7) The aggregate value of improvements to parcels of real property in the school district exempted from taxation under any such ordinance or resolution, if, by January 1, 2006, proceeds have been pledged for designated transportation improvement projects that involve federal funds for which the proceeds are used to meet a local share match requirement for such funding.

Because of enterprise zone and similar property tax exemptions

As part of a school district's property exemption value, the act also requires the Tax Commissioner, beginning in fiscal year 2007, to certify to the Department of Education the aggregate value of real property in the school district, as



indicated on the list of exempted property for the preceding tax year and as if the property had been assessed for taxation that year, for which an exemption from taxation is granted on or after January 1, 2006, pursuant to an agreement between the school district and another political subdivision that exempts property because it is part of urban renewal projects, community redevelopment programs (for blighted areas), community reinvestment programs, enterprise zones, local railroad operations, or programs for the remediation of contaminated property, but not including compensation for tax revenue foregone pursuant to an agreement entered into on or after January 1, 2006.

The amount certified by the Commissioner must be added back to the 23-mill charge-off, except that the following amount is subtracted from a school district's property exemption value: the product determined by multiplying (a) the aggregate value of the real property in the school district exempted from taxation under any of those programs, projects, or enterprise zones by (b) a fraction, the numerator of which is the difference between (i) the amount of anticipated revenue the school district would have received in the preceding fiscal year if the real property exempted from taxation had not been exempted, and (ii) the aggregate amount of payments and other compensation received in the preceding fiscal year by the school district pursuant to any agreements between the school district and the political subdivision that acted under the authority of law and that were entered into in relation to the exemption, and the denominator of which is the amount of anticipated revenue the school district would have received in the preceding fiscal year if the real property exempted from taxation had not been exempted.

Reporting requirements for school district treasurers

The act provides that on or before June 1 each year, beginning June 1, 2006, the Director of Development must certify to the Department of Education the total amount of payments received by each city, local, exempted village, or joint vocational school district during the preceding tax year pursuant to an agreement whereby the school district is compensated for tax revenue foregone as a result of property tax exemptions granted under an ordinance or resolution creating an incentive district. On or before April 1 each year, beginning April 1, 2006, the treasurer of each city, local, exempted village, or joint vocational school district that has entered into such an agreement must report to the Director the total amount of payments the district received during the preceding tax year pursuant to the agreement. The State Board of Education, in accordance with procedures established in continuing law, may suspend or revoke the license of a treasurer found to have willfully reported erroneous, inaccurate, or incomplete data regarding those agreements. (However, the charge-off "add backs" do not apply to joint vocational school districts.)

Revised base-cost formula

(R.C. 3317.022)

The act uses the new base funding supplements, the phased-out cost-of-doing-business factor, and "add backs" of the valuation of some tax exempt property (all as described above) in setting forth the following revised formula for calculating a district's total base cost funding:

[(Cost-of-doing-business factor x formula amount x formula ADM) + the sum of all four of the base funding supplements] – [0.023 x (recognized valuation + "property exemption value")]

Base-cost formula for joint vocational school districts

(R.C. 3317.16)

Joint vocational school districts (JVSDs) are special taxing districts that provide career-technical instruction to high school students. They are formed by agreements among two or more school districts. The member districts send their students who wish to enroll in career-technical programs to the JVSD for those services. In addition, JVSDs may enter into contracts with nonmember districts and schools to provide services specified in the contracts.

Under prior law and the act, a JVSD's base-cost funding and some of its categorical funding are calculated in the same manner as other school districts, except that its "charge off" is only ½ mill (or 0.0005) times its recognized valuation. Under the act, the base-cost formula for JVSDs remains:

(Cost-of-doing-business factor x formula amount x formula ADM) –
(0.0005 x recognized valuation)

The base-cost formula for JVSDs under the act is essentially identical to the one for JVSDs under prior law. The act does not provide for payment of base funding supplements to JVSDs. Also, the act does not change the charge-off calculation for JVSDs.³³ The act does, however, apply the new base-cost funding guarantee to JVSDs as well as city, exempted village, and local school districts (see below).

³³ Generally, JVSDs do not receive payments under tax abatement agreements.

Base-cost funding guarantee

(R.C. 3317.022(A) and 3317.16(B))

The act guarantees that each city, exempted village, local, or joint vocational school district's state payment for base cost funding will be no lower than its fiscal year 2005 state aggregate or per pupil base cost payment, whichever is less.

To do so, the act requires the Department of Education to calculate both of the following for each district:

(1) The difference between the district's fiscal year 2005 base-cost payment and the base-cost amount computed for the district for the current fiscal year;

(2) [(fiscal year 2005 base-cost payment divided by fiscal year 2005 formula ADM) times current year formula ADM] minus the base-cost amount computed for the district for the current fiscal year. This formula results in a per pupil fiscal year 2005 state base-cost amount multiplied by the district's *current* formula ADM.

If one of the amounts computed under (1) and (2) above is a positive amount, the Department must pay the district that amount in addition to the base-cost amount calculated for the district. If both amounts are positive amounts, the Department must pay the district the *lesser* of the two amounts in addition to the base-cost amount calculated for the district.

Building blocks spreadsheet

(R.C. 3317.016)

In addition to the funding information for each district that the Department already has on its web site (that is, the district's form SF-3 and other forms that show how a district's funding is calculated), the act requires the Department to publish on its web site a spreadsheet for each district that indicates the "constituent components of the district's 'building blocks' funds." Specifically, the act requires that the following information be included in each district's spreadsheet:

(1) Aggregate and per pupil amounts of state funds and of combined state and local funds for compensation of base classroom teachers;

(2) The average compensation decided by the General Assembly for base classroom teachers and the number of base classroom teachers attributable to the district based on the student-teacher ratio decided by the General Assembly;

(3) Aggregate and per pupil amounts of state funds and of combined state and local funds for each of the following:

- (a) Other personnel support;
- (b) Nonpersonnel support;
- (c) Academic intervention services;
- (d) Professional development;
- (e) Data-based decision making;
- (f) Professional development for data-based decision making; and

(g) Separate specifications for each of the eight components of the poverty-based assistance subsidy (see "Poverty-based assistance payments" below).

Spending requirements associated with the building blocks model

In general

(R.C. 3317.012(D))

The act states that the General Assembly intends that school districts spend the state funds calculated and paid for each component of the building blocks methodology (that is, the amount determined for base classroom teachers, other personnel support, and nonpersonnel support and the amount of base funding supplements paid to a district) for those specific purposes.

Academic watch and academic emergency districts

(R.C. 3317.017)

In addition, the act requires the Superintendent of Public Instruction, not later than July 1, 2006, to adopt a rule under which the Superintendent "may issue an order with respect to the spending, by a school district declared to be under an academic watch or in a state of academic emergency . . . of the following state building block funds intended to pay instructional-related costs" (including in many cases amounts received from the poverty-based assistance subsidy):

- (1) Compensation of base classroom teachers;
- (2) Academic intervention services;
- (3) Professional development;

- (4) Data-based decision making;
- (5) Poverty-based assistance guarantee payment;
- (6) All-day kindergarten payments;
- (7) Class-size reduction;
- (8) Services to limited English proficient students;
- (9) Dropout prevention; and
- (10) Community outreach.

The rule must authorize the Superintendent of Public Instruction to issue an order that does one or a combination of the following:

- (1) Require the school district to periodically report to the Superintendent on its spending of the state funds paid for each building blocks component;
- (2) Require the district to establish a separate account for each of the building blocks components; or
- (3) Direct the district's spending of any or all of the state funds paid for the components.

The act also directs each school district board of education to comply with an order issued by the Superintendent.

Transitional aid

(Sections 206.09.39 and 206.09.42)

To protect districts from losses in state funding due to the act's funding formula changes, the act specifies that in both fiscal years 2006 and 2007, no city, exempted village, or local school district's "SF-3 funding plus charge-off supplement" be less than it was for the prior fiscal year. Accordingly, the Department of Education must pay a district additional state funds, as necessary, to eliminate any decrease in either fiscal year.

A district's "SF-3 funding plus charge-off supplement" comprises most of the state subsidies paid to school districts, including base-cost, special education, vocational education, transportation, poverty-based assistance, gifted education units, GRADS subsidy for programs for parenting and pregnant students, adjustments for classroom teachers and educational service personnel, parity aid, state aid guarantee, reappraisal guarantee, and the charge-off supplement.

The act also requires the Department, when calculating the reappraisal guarantee for a district in fiscal year 2006, 2007, or 2008, to include any of these transitional aid payments it made to the district in the previous fiscal year.³⁴

In addition, the act guarantees that no JVSD in either fiscal year will receive a decrease from the previous fiscal year in its "joint vocational funding." The act defines "joint vocational funding" as the district's aggregate state funding for base-cost funding, special education, vocational education, GRADS, and the JVSD state aid guarantee.

Permanent state aid guarantee eliminated

(repealed R.C. 3317.0212 and R.C. 3317.16(H); conforming changes in R.C. 3314.08(A)(10), 3317.031, 3317.081, and 3317.09)

Prior law guaranteed that every city, exempted village, and local school district with a formula ADM over 150 would receive a minimum amount of total state aid (base cost and categorical funding) based on its state funds for fiscal year 1998. The state funds guaranteed included the sum of base-cost funding, special education funding, vocational education funding, gifted education funding, DPIA funds, equity aid, state subsidies for teachers with high training and experience, and state "extended service" subsidies for teachers working in summer school. The Department of Education was required to pay a district the difference between the amount calculated under the current formulas and the amount the district received in fiscal year 1998. A similar guarantee applied to JVSDs.

The act eliminates both guarantees.

Application of funding formula changes to county MR/DD boards, community schools, open enrollment, and Post-Secondary Enrollment Options Program

(R.C. 3313.98, 3314.08, 3317.20, and 3365.01)

The act applies its new base-cost formula to funding for county MR/DD boards, community schools (charter schools), interdistrict open enrollment, and the Post-Secondary Enrollment Options Program. In doing so, it provides that per

³⁴ *The reappraisal guarantee prevents a school district from losing any state funds in the first fiscal year after the county auditor has reappraised or updated the valuation of taxable property. (County auditors formally reappraise property value every six years and, in the third year of the six-year period, perform a statistical update of the valuations.) The effect is to exempt districts for one year against any reduction in state funding that might be triggered by the increase in the valuation of taxable property. (R.C. 3317.04, not in the act.)*

pupil payments for participants under those provisions will be determined based on the formula amount times the phased-out cost-of-doing-business factor plus a per pupil amount of the four new base funding supplements.

Twice-annual reporting of formula ADM

(R.C. 3317.01, 3317.02, and 3317.03)

"Formula ADM" (average daily membership) is the figure that represents for school funding purposes each school district's full-time-equivalent enrollment. Under prior law, each city, exempted village, and joint vocational school district certified its formula ADM once annually for the first full week of October.³⁵ Prior law also permitted a school district to report any increase in its formula ADM for the first full week of February that amounted to at least 3% over the count of the previous October. In such case, the district's payments for the balance of the fiscal year were to be based on the higher formula ADM.

Beginning in fiscal year 2006, the act requires every school district to certify its formula ADM twice each fiscal year. The first count is the traditional count for the first full week of October, as under prior law. The second count is to be for the third full week of February. If a school is closed one or more days that week due to hazardous weather conditions or for other statutorily prescribed public calamities, the district may seek a waiver from reporting the formula ADM of that school for that week.³⁶ If the Superintendent of Public Instruction grants the waiver, the Superintendent must specify an alternative date for certifying the formula ADM of that school.

The act prescribes that the October certification be used to calculate the district's state payments for the months of July through December of the fiscal year and that the *average* of the February and October certifications be used to calculate payments for the months of January through June.³⁷ Also, in the case of

³⁵ *Until this "October count" was finalized each year, the Department would estimate each district's payments.*

³⁶ *Besides hazardous weather conditions, the other calamities for which, under continuing law, a school may be closed for up to five days each year without penalty are disease epidemic, inoperability of school buses or other equipment necessary to the school's operation, damage to a school building, or other temporary circumstances due to utility failure rendering the school building unfit for school use (R.C. 3317.01(B)).*

³⁷ *The act also prescribes the averaging of October and February special education and vocational education ADMs for purposes of those categorical payments for January through June.*

the February certification (or the alternate week if applicable), the act authorizes a district to include in its formula ADM any students who were included in the October count but who since then have received their high school diplomas.

Recommended plan for second annual ADM certification

(Section 206.10.24)

The act provides that, regardless of its changes regarding the reporting of formula ADM (as described above), the Superintendent of Public Instruction, not later than July 1, 2006, must recommend to the General Assembly a plan for reporting of formula ADM twice each year. The plan is to include provisions whereby:

(1) School districts make a second annual certification of formula ADM in the second half of each fiscal year, prior to the first day of April; and

(2) This second annual certification of formula ADM may be used to guarantee a minimum level of state funding to each school district for the next fiscal year, with sufficient notice so that the districts may prepare in advance of each school year.

The recommended plan also must include methods to accommodate enrollment growth trends in fast-growing districts.

Random audits of school district ADM reports

(R.C. 3317.035)

The act permits, but does not require, the Auditor of State to conduct annual random, select audits of the average daily membership information reported by school districts to the Department of Education.

Parity aid

(R.C. 3317.0217)

Background

In 2001, the General Assembly began phasing in a new subsidy known as "parity aid," to replace equity aid and another former subsidy known as "power equalization." The parity aid subsidy pays additional state funds to school districts based on combined income and property wealth. For most eligible school districts, the subsidy is the difference between what a specified number of mills will raise in the 123rd wealthiest district, or in other words the district in the 80th

percentile of wealth, and what that same number of mills will raise in the district for which the subsidy is being calculated. The amount of the subsidy, therefore, varies depending on how far below the 80th percentile a district is ranked. The 123 districts with the highest income-adjusted valuations are not eligible for the subsidy. There also is an alternative formula for calculating parity aid for districts that might not otherwise qualify but that experience a combination of lower incomes, higher poverty, and higher business costs than the statewide median of these variables.

Changes in the parity aid calculation

Under prior law, the millage rate used to compare the revenue power of most of the districts eligible for parity aid was 9.5 mills. That rate represented the General Assembly's determination of the average number of "effective operating mills" (including school district income tax equivalent mills) that school districts in the 70th to 90th percentiles of property valuations levied in fiscal year 2001 *beyond* the millage needed to finance their calculated local shares of base-cost, special education, vocational education, and transportation funding. The act revises the formula for calculating parity aid by basing it on what 7.5 mills would raise in the 123rd highest ranked district, instead of 9.5 mills. The act states that this change is to account for the General Assembly's policy decision to phase-out use of the cost-of-doing-business factor in the base cost formula.

The act also conforms the parity aid calculation to the policy changes elsewhere in the act prohibiting the payment of parity aid to Internet- or computer-based community schools (e-schools). The act essentially removes students attending e-schools from a district's formula ADM for purposes of determining a district's parity aid. It also removes from a district's formula ADM for that same purpose students receiving scholarships under the Educational Choice Scholarship Pilot Program.

Full funding of parity aid

Prior law provided that state parity aid payments for fiscal year 2005 be 76% of the amount calculated, and for fiscal years thereafter be 100% of the amount calculated. The act retains the full-funding provision for the revised formula.

Poverty-based assistance--background

Prior law provided for an additional, nonequalized state subsidy to be paid to school districts with threshold percentages of resident children from families receiving public assistance. Known as "disadvantaged pupil impact aid" or "DPIA," the amount of the subsidy depended on the district's "DPIA index," its

percentage of children receiving public assistance compared to the statewide percentage of such children. The act renames and substantially revises the DPIA subsidy, retaining some of the components of prior law.

Under that prior law, three separate calculations determined the total amount of a district's DPIA funds:

(1) Any district with a DPIA index greater than or equal to 0.35 (meaning its proportion of children receiving public assistance was at least 35% of the statewide proportion) received money for safety and remediation. Districts with DPIA indexes between 0.35 and 1.00 received \$230 per pupil in a public assistance family. The per pupil amount increased proportionately for districts whose indexes were greater than 1.00.

(2) Districts with a DPIA index greater than 0.60 received an additional "third grade guarantee" or "class-size reduction" payment for increasing the amount of instructional attention per pupil in grades K to 3. The amount of the payment increased with the DPIA index.

(3) Districts with either a DPIA index equal to or greater than 1.0 (having at least the statewide average percentage of public assistance children) or a three-year average formula ADM exceeding 17,500, and that offer all-day kindergarten under prior law received state funding for the additional half day. This payment is retained by the act largely as provided under prior law.

Regardless of index, prior law also provided that all districts were eligible for at least the amount of DPIA funding they received during fiscal year 1998.

Poverty-based assistance payments

(R.C. 3317.029; conforming changes in R.C. 3314.03, 3314.08, 3314.13, 3317.0212, 3317.0217, and 3317.10)

The act revises the Disadvantaged Pupil Impact Aid (DPIA) subsidy, and renames the subsidy as "poverty-based assistance." The revisions consist of changes to the components of the prior DPIA subsidy, plus a phase-in of four new components.

Poverty index

(R.C. 3317.029(A))

As with the former DPIA subsidy, the amount of poverty-based assistance paid to a school district will depend on its percentage of children receiving public assistance, compared to the statewide percentage--a relative measure called the



"poverty index" (formerly, the "DPIA index"). For example, a school district with a poverty index of 1.0 has the same proportion of children living in families receiving 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 1.25 has a proportion of children receiving public assistance that is 125% of the statewide proportion.

Under prior codified law, the index accounted for each district's five-year average proportion of children ages 5 to 17 whose families (1) have incomes not exceeding the federal poverty guidelines³⁸ and (2) participate in one of the following programs:

- (a) Ohio Works First;
- (b) Food Stamps;
- (c) Medicaid;
- (d) The Children's Health Insurance Program ("CHIP"); or
- (e) The state Disability Medical Assistance program.

Although the use of multiple indicators for calculating the index was enacted in 2001, they were never used due to overriding temporary provisions that delayed their use. The act permanently precludes the use of these multiple indicators (including the requirement to include families with incomes that do not exceed federal poverty guidelines). Instead, a district's index under the act (as under prior temporary law) continues to be based only on the proportion of its students living in families receiving assistance under Ohio Works First.

Guaranteed minimum payment

(R.C. 3317.029(B))

The act guarantees that each school district annually will receive poverty-based assistance that is at least equal to its fiscal year 2005 DPIA payment, instead of its fiscal year 1998 payment as under prior law. If the sum of the various components of the new subsidy does not equal the district's fiscal year 2005 DPIA payment, the district receives the amount of its fiscal year 2005 payment.³⁹

³⁸ *The 2005 federal poverty guideline for a family of three is \$16,090.*

³⁹ *The act does deduct from the fiscal year 2005 guarantee any amount paid that year for a district's students who were attending Internet- or computer-based community schools, which schools the act disqualifies for poverty-based assistance.*

All-day kindergarten payment

(R.C. 3317.029(D))

The act does not substantially revise the payment for all-day kindergarten. Therefore, districts with a poverty index greater than or equal to 1.0, or a three-year average formula ADM exceeding 17,500 students, and that offer all-day kindergarten continue to receive state funding for the additional half-day for their kindergarten students. However, the act does codify a customary temporary provision that permits a district that received an all-day kindergarten payment in the previous year to continue to receive that payment even if its index falls below 1.0.

Academic intervention payment

(R.C. 3317.029(C), (J)(6), and (M)(2))

The act replaces the former "safety, security, or remediation" payment with a new, phased-in, three-tier payment designated for "academic intervention" paid to districts with a poverty index greater than or equal to 0.25. The act refers to the respective tiers as "level one," "level two," and "level three," each with its own formula for calculating payments to eligible districts. All three payments are phased in at 60% of the calculated amounts in fiscal year 2006 and 100% of the calculated amounts in fiscal year 2007.

Level one. Level one is designated for "large-group academic intervention for all students" for districts with poverty indexes of 0.25 and higher. Districts with poverty indexes of 0.75 and above receive the maximum calculation, whereas districts with indexes between 0.25 and 0.75 are paid on a sliding scale. The payment is based on \$20 per hour for 25 hours in fiscal year 2006, and \$20.40 per hour for 25 hours in fiscal year 2007, for every 20 students in a district's formula ADM.

Level two. Level two is designated for "medium-group academic intervention for all students" for districts with poverty indexes of 0.75 and higher. Districts with poverty indexes of 1.50 and above receive the maximum calculation, whereas districts with indexes between 0.75 and 1.50 are paid on a sliding scale. The payment is based on \$20 per hour for 50 hours in fiscal year 2006, and \$20.40 per hour for 50 hours in fiscal year 2007, for every 15 students in a district's formula ADM.

Level three. Level three is designated for "small-group academic intervention for impoverished students" for districts with poverty indexes of 1.50 and higher. Districts with poverty indexes of 2.50 and above receive the

maximum calculation, whereas districts with indexes between 1.50 and 2.50 are paid on a sliding scale. The payment is based on \$20 per hour for 160 hours in fiscal year 2006, and \$20.40 per hour for 160 hours in fiscal year 2007, for each "small group intervention unit." The act defines that unit as (the district's poverty student count times 3) divided by 10.

Poverty-Based Assistance Academic Intervention Payment

	Level One		Level Two		Level Three	
	FY 2006	FY 2007	FY 2006	FY 2007	FY 2006	FY 2007
Phase-in	60%	100%	60%	100%	60%	100%
Hourly Rate	\$20.00	\$20.40	\$20.00	\$20.40	\$20.00	\$20.40
Hours	25	25	50	50	160	160
Unit Size	Formula ADM divided by 20		Formula ADM divided by 15		(Poverty student count times 3) divided by 10	
Sliding Scale Payment	School districts with poverty indexes between 0.25 and 0.75		School districts with poverty indexes between 0.75 and 1.50		School districts with poverty indexes between 1.50 and 2.50	
Max. Payment	School districts with poverty indexes of 0.75 or higher		School districts with poverty indexes of 1.50 or higher		School districts with poverty indexes of 2.50 or higher	

Use of the payment. The act requires all school districts, regardless of index, that receive the new "academic intervention" payment to use it for academic intervention services for students who have failed or are in danger of failing any of the state achievement tests, including intervention services required under the third-grade reading guarantee.⁴⁰ The act also prohibits any collective bargaining agreement entered into after June 30, 2005 (the act's effective date) from requiring use of the district's academic intervention payment for any other purpose.

⁴⁰ *The third-grade reading guarantee (codified in R.C. 3313.608, not in the act) aims to ensure that students are reading at grade level by the end of third grade. To that end, the provision requires that districts and community schools offer intense summer remediation for students who do not attain proficient scores on the third grade achievement test. The payments for dropout prevention and community outreach also may be used for intervention services for those students who have failed or are at risk of failing state achievement tests.*

Deployment plan. The act also requires any district that receives a level two or level three payment to submit to the Department of Education an annual plan describing how the district will deploy those funds. This deployment must conform to the spending prescriptions described above and with any order issued by the Superintendent of Public Instruction (see "**Spending requirements associated with the building blocks model**" above).

K to 3 class-size reduction payment

(R.C. 3317.029(E) and (J)(7))

The third component of the former DPIA subsidy, the so-called "class-size reduction" payment, was intended to assist districts to increase instructional attention for students in grades K to 3. It was paid on a sliding scale based on the amount of money it would take to hire additional teachers to reduce class sizes in those grades, although districts' strategies to increase instructional attention did not have to include hiring more teachers.

The act retains this component within the new poverty-based assistance subsidy, but it raises the eligibility threshold to a poverty index of 1.0, instead of 0.60 under prior law. It also revises the payment formula by (1) reducing the imputed teacher-pupil ratio from 23:1 to 20:1 for districts at the bottom of the sliding scale and (2) reducing the threshold index at the top of the scale to a poverty index of 1.5, instead of 2.5 under prior law. The first change (assuming a ratio of 20:1 instead of 23:1) decreases the number of imputed teachers and, therefore, the amount of funding needed to reduce class sizes further. The second change (lowering the top of the scale to an index of 1.5 instead of 2.5), however, qualifies more districts for full funding instead of a sliding scale payment.

Average teacher salary. One of the variables of the class-size reduction payment formula is the statutorily designated statewide average teacher salary. This amount was last set at \$43,650 for fiscal year 2003. The act sets it at \$53,680 for fiscal year 2006 and \$54,941 for fiscal year 2007, which also are the base classroom teacher compensation amounts prescribed under the act (see "**New building blocks methodology**" above).

Payment for services to limited-English proficient students

(R.C. 3317.029(F) and (J)(2))

The act phases in a new poverty-based component to assist with services to students who are limited-English proficient. To qualify for this payment, both of the following must apply:

- (1) The district's poverty index must be 1.0 or higher; and

(2) The proportion of the district's students who were limited-English proficient in the 2002-2003 school year must have been at least 2%, as reported by the Department of Education on the district's state report card.

The payment formula is a sliding scale that ranges from 12.5% of the base-cost formula amount (\$660 in fiscal year 2006) per limited-English proficient student for a district with a poverty index equal to 1.0, to 25% (\$1,321 in fiscal year 2006) of the base-cost formula amount per limited-English proficient student for districts with a poverty index of 1.75 or higher. However, this subsidy is phased-in, with districts eligible for 40% of the formula calculation in fiscal year 2006 and 70% in fiscal year 2007.

Counting limited-English proficient students after fiscal year 2007. In fiscal years 2006 and 2007, the per student amount calculated by the formula is to be multiplied by the number of the district's limited-English proficient students in the 2002-2003 school year, as determined when the Department calculated the district's limited-English proficient percentage on the state report cards. The act requires the Department, by December 31, 2006, to recommend to the General Assembly and the Director of Budget and Management a new method of identifying the number of limited-English proficient students for purposes of calculating payments after fiscal year 2007.

Use of the payment. Each school district must use its payment for services to limited-English proficient students, in one or more of the following ways:

- (1) To hire teachers for limited-English proficient students or other personnel to provide intervention services for those students;
- (2) To contract for intervention services for those students; or
- (3) To provide other services to assist those students in passing the third grade reading achievement test, and to provide the statutorily mandated intervention services to those students who have not passed that test.

Professional development payment

(R.C. 3317.029(G) and (J)(3))

A second new component for poverty-based assistance that the act phases in is a payment for professional development of teachers, payable to districts with poverty indexes greater than or equal to 1.0. The payment is a percentage of the base-cost formula amount, multiplied by an imputed number of teachers. For this purpose, the act calculates each eligible district's number of teachers by dividing its formula ADM by 17. The per teacher amount is set on a sliding scale for districts with poverty indexes greater than or equal to 1.0 but less than 1.75. For

districts with poverty indexes of 1.75 or higher, the per teacher payment is 4.5% of the base-cost formula amount (\$238 in fiscal year 2006) per teacher. However, the act phases in this component by directing that districts be paid for 40% of the formula calculation in fiscal year 2006 and 70% in fiscal year 2007.

Use of the payment. A district must use its professional development payment for professional development of teachers or other licensed personnel providing educational services to students as follows:

(1) The professional development must be in one or more of the following areas: (a) data-based decision making, (b) standards-based curriculum models, or (c) job-embedded professional development activities that are research-based, as defined in federal law; and

(2) The professional development program must be on the Department of Education's list of eligible programs, unless the Department grants the district a waiver to implement an alternative program.

Dropout prevention payment

(R.C. 3317.029(H) and (J)(4))

The act phases in a poverty-based component for dropout prevention programs in the "Big-Eight" school districts (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown). This component pays an amount for each student in the district's formula ADM. That amount is 0.5% of the base-cost formula amount (\$26 in fiscal year 2006), multiplied by the district's poverty index. Therefore, the higher a district's poverty index, the higher its per pupil payment. For example, if a district's poverty index is 1.5, the per pupil payment would be (0.5% x formula amount x 1.5), which equals 0.75% of the formula amount (\$40 in fiscal year 2006). If the district's poverty index is 2.5, the per pupil payment would be (0.5% x formula amount x 2.5), which equals 1.25% of the formula amount (\$66 in fiscal year 2006).

However, all calculated amounts are phased in at 40% for fiscal year 2006 and 70% for fiscal year 2007.

Use of the payment. The Big-Eight districts must use their dropout prevention payment for one or a combination of the following purposes:

(1) Preventing at-risk students from dropping out of school;

(2) Implementing programs designed to ensure that schools are free of drugs and violence and have a disciplined environment conducive to learning; or



- (3) Academic intervention services.

If a district elects to use all or part of the payment for dropout prevention, it must implement a program on a list provided by the Department of Education, unless the Department grants the district a waiver to implement an alternative program.

Community outreach payment

(R.C. 3317.029(I), (J)(5), and (M)(3))

The last new component of poverty-based assistance that the act phases in is a payment for community outreach services. Only the state's 21 urban districts are eligible for this payment. The payment is calculated in the same manner as the dropout prevention payment for Big-Eight districts: 0.5% times the formula amount times the district's poverty index times the district's formula ADM, phased in at 40% in fiscal year 2006 and 70% in fiscal year 2007.

Use of the subsidy. Districts that receive a community outreach payment must use it for one or a combination of the following purposes:

- (1) To hire or contract for community liaison officers, attendance or truant officers, or safety and security personnel;
- (2) To implement programs designed to ensure that schools are free of drugs and violence and have a disciplined environment conducive to learning; or
- (3) To implement academic intervention services.

Spending prescriptions

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

As with the former DPIA subsidy, the act establishes guidelines for spending poverty-based assistance, with the strictest guidelines applying to districts with poverty indexes of 1.0 or higher (the districts that receive most of the subsidy).

Poverty indexes of 1.0 or higher. Districts with poverty indexes of 1.0 or higher must spend their poverty-based assistance first to provide all-day kindergarten to all of the kindergartners they certified when they requested an all-day kindergarten payment. They then must follow the spending guidelines established for the payments for academic intervention, limited-English proficient students, professional development, dropout prevention, and community outreach, described above.

The act retains the provision of prior law requiring these districts to use whatever remains of their poverty-based assistance payment (mostly the class-size reduction payment) for increasing the amount of instructional attention to students in grades K to 3, either by reducing the ratio of students to instructional personnel (teachers, aides, or paraprofessionals) or by undertaking other initiatives that have the effect of increasing the length of the school day or school year.

Poverty indexes below 1.0. Although most of the poverty-based assistance subsidy is designated for districts with poverty indexes of 1.0 or higher, it is possible for districts with indexes below 1.0 to receive a subsidy. The act prescribes spending for those districts, as follows:

(1) All school districts with poverty indexes between 0.25 and 1.0 are eligible for a level one academic intervention payment. As it does for all other school districts, the act (a) requires these districts to use this payment solely for academic intervention services for students who have failed or are in danger of failing any of the state achievement tests and (b) prohibits any collective bargaining agreement entered into after June 30, 2005 (the act's effective date) from requiring use of this payment for any other purpose.

(2) An Urban-21 district is eligible for the community outreach payment, regardless of its index, and must abide by the spending requirements attached to that payment (see "**Community outreach payment**" above).

(3) As under prior law, a school district may receive a payment for all-day kindergarten, regardless of its index, if it either (a) has a three-year average formula ADM of 17,500 or higher or (b) received an all-day kindergarten payment in the previous year. As under prior law, the district must ensure that all-day kindergarten is provided to at least the percentage of kindergartners it certified would receive it.

(4) A district that received a DPIA subsidy in FY 2005 is guaranteed to receive at least that amount in future fiscal years.

For districts with indexes below 1.0 that receive a guarantee payment or have money remaining after paying for all-day kindergarten, the act restricts how the districts may spend the money to an itemized list of services. This list is essentially the same as specified in prior law. But where prior law required the districts to spend at least 70% of their DPIA funds for one or more services on the list, the act requires them to spend 100% of their guarantee or leftover all-day kindergarten payment for services on the list.

Report on spending prescriptions

(Section 206.09.37)

The act requires the Department of Education to review the spending requirements for poverty-based assistance and submit a report recommending modifications, by March 31, 2007, to the Director of Budget and Management, the Speaker of the House, and the President of the Senate. The recommendations must include "decreasing degrees of flexibility of spending for districts not meeting adequate progress standards as defined by the Department." The Department must specifically review the requirements for increasing instructional attention to children in grades K to 3 with the class-size reduction payment. The Department must use reports submitted by school districts concerning intervention funding to inform its recommendations.⁴¹

Transportation subsidy

(Section 206.09.21)

Background

Each school district is eligible for a subsidy for transporting students to and from school.⁴² Like other categorical subsidies, the amount calculated is shared between the district and the state. The amount of additional state funding paid for transportation is the *greater* of 60% or the district's state share percentage of the amount calculated by the formula.

The formula itself is based on the statistical method of multivariate regression analysis.⁴³ Under this formula, each district's payment for

⁴¹ Section 206.09.90 of the act summarizes the state funding appropriated for student intervention services and requires each school district to report to the Department concerning its spending for intervention services. Each district's report is due by September 30, 2006.

⁴² A city, exempted village, and local school district is required to provide transportation to and from school for each student in grades K through 8 who resides in the district and lives more than two miles from the school the student attends. The obligation applies also to community school and nonpublic school students unless the direct travel time measured by school bus is more than 30 minutes. A district also may provide transportation to resident students in grades 9 through 12. (R.C. 3327.01.)

⁴³ Regression analysis is a statistical tool that can explain how much of the variance in one variable (in this case, transportation costs from district to district) can be explained by variance in other variables (here, number of bus miles per student per day and the percentage of students transported on buses).

transportation of students on school buses is based on (1) the number of daily bus miles traveled per day per student in the previous fiscal year and (2) the percentage of its student body that it transported on school buses in the previous fiscal year (whether the buses were owned by the district board or a contractor).⁴⁴ The Department of Education updates the values for the formula and calculates the payments each year based on analysis of transportation data from the previous fiscal year. The Department must apply a 2.8% inflation factor to the previous year's cost data. There is a separate "rough road subsidy" targeted at relatively sparsely populated districts where there are relatively high proportions of rough road surfaces.

Payments for fiscal years 2006 and 2007

Instead of calculating the transportation subsidy as otherwise required under codified law, the act specifies that each district's transportation subsidy in each of fiscal year 2006 and 2007 be 2% greater than it was in the previous fiscal year. (For purposes of computing a school district's charge-off supplement and excess cost supplement, the local share of the calculated amount for transportation is 2% greater than in the previous year.) Districts that did not receive a state subsidy for transportation in fiscal year 2005 are not eligible for transportation funding in either fiscal year 2006 or 2007.

Recommendations for formula changes

The act requires the Department of Education, by July 1, 2006, to submit to the Director of Budget and Management, President of the Senate, and Speaker of the House recommendations for a new transportation funding formula.

Special education weighted funding

(R.C. 3317.013)

Background

School districts are eligible to receive an additional amount per pupil for providing special education and related services to each student who is identified as a disabled student.⁴⁵ The amount of additional funding is calculated as a weight

⁴⁴ *The statute presents the following model of the formula based on an analysis of FY 1998 transportation data: $51.79027 + (139.62626 \times \text{daily bus miles per student}) + (116.25573 \times \text{transported student percentage})$. The law directs that the formula be updated each year to reflect new data. (R.C. 3317.022(D)(2).)*

⁴⁵ *School districts and community schools are required under state and federal law to identify each disabled student enrolled in school and provide appropriate services for*

(or multiple) applied to the base-cost formula amount that represents an expression of additional costs attributable to the special circumstances of the students in each class. For example, a weight of 0.25 would indicate that an additional 25% of the formula amount is presumed necessary to provide additional services to a student in that category. Each school district is paid its "state share percentage" of the additional weighted amount.

The following weights are prescribed by continuing law for special education and related services.⁴⁶

Disabilities	Weight
Speech and language only	0.2892
Specific learning disabled Developmentally handicapped Other health handicapped-minor	0.3691
Severe behavior handicapped Hearing handicapped Vision Impaired	1.7695
Orthopedically handicapped Other health handicapped-major	2.3646
Multihandicapped	3.1129
Both visually and hearing disabled Autism Traumatic brain injury	4.7342

Continued phase-in of special education weights

Prior law provided that the special education weights were to be paid at 88% in fiscal year 2004 and 90% in fiscal year 2005, but it did not provide any phase-in percentages for subsequent fiscal years. The act specifies that the special education weights continue to be paid at 90% in both fiscal years 2006 and 2007.

that student. Services must be provided in accordance with the student's "individualized education program" or "IEP." (R.C. Chapter 3323. and 20 U.S.C. 1400 et seq.)

⁴⁶ *Two categories of multiples also are prescribed for the provision of vocational education and associated services (see R.C. 3317.014, not in the act).*

Threshold catastrophic amount

(R.C. 3317.022(C)(3))

In addition to the prescribed weighted amount, school districts and community schools may receive a "catastrophic cost" subsidy for some special education students if the costs to serve the students exceed the prescribed "threshold catastrophic cost." A school district may receive the sum of (1) one-half of the district's costs in excess of the threshold amount and (2) one-half of those costs times the district's state share percentage. A community school may receive 100% of the amount of its costs in excess of the threshold amount.⁴⁷

The act increases the catastrophic threshold amount to \$26,500 for categories two through five (from \$25,700 as under prior law) and to \$31,800 for category six (from \$30,800 as under prior law).

Speech-language services subsidy

(R.C. 3317.022(C)(4) and 3317.16(D)(2))

A separate subsidy for speech-language pathology services pays school districts their state share percentage of one "personnel allowance" for every 2,000 students in their formula ADMs. The act maintains the personnel allowance at \$30,000, which has been the amount of the allowance since fiscal year 2002.

Special education transportation subsidy

(R.C. 3317.024(J))

School districts and educational service centers are eligible for an additional subsidy for transporting disabled students who cannot be transported by a regular school bus. Prior law referred only to "developmentally handicapped" students in authorizing this additional payment. The act provides instead that the subsidy applies to all disabled students.

Special education funding report

(R.C. 3317.013)

The act requires the Department to submit a report to the Office of Budget and Management by May 30, 2006 and 2007, that specifies for each school district the amount of local, state, and federal pass-through funds allocated for special

⁴⁷ R.C. 3314.08(E), 3317.022(C)(3), and 3317.16(E).

education and related services. The Department was previously required to submit such a report on May 30, 2004 and 2005.

Payment of special education excess costs to JVSDs

(R.C. 3317.16(G)(3) and (4))

In some cases, the money a JVSD receives from the calculated state and local shares may not cover the actual cost of providing special education and related services to the disabled students enrolled in the JVSD. Continuing law requires that the portion of the cost of providing those services by a JVSD that exceeds the calculated state and local shares of base-cost and special education funding be paid by the student's resident district or, if the student is also enrolled in a community school, by that school. (The student's resident school district or community school is legally responsible for the student's services.) Prior law *required* the Department of Education to deduct these excess costs from the account of the resident district or community school and pay that amount to the JVSD. The act permits a JVSD to decline having the Department transfer payments for excess costs and, presumably, to rely instead on a direct payment from the district or community school.

Payment of excess costs for children in residential "homes"

(R.C. 3323.14; conforming changes in R.C. 3314.08(A)(10) and 3317.023(N))

The act authorizes a school district that is providing special education and related services to a child who has been placed by court order in a residential "home" (that is a home, institution, foster home, group home, or other residential facility that receives or cares for children) to charge excess costs to the child's district of residence (generally, where the child's parent resides). The district educating the child may request the Department of Education to credit it with the amount of the excess costs and deduct that amount from the child's district of residence.

Switch to weighted special education funding for state institutions

(R.C. 3317.201; conforming changes in R.C. 3317.03(G)(1), 3317.05(D), 3317.052, 3317.053, 3323.091, and 3323.16)

The Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, Department of Rehabilitation and Correction, and Department of Youth Services are required under continuing law to provide special education programs for the disabled children in their custody. Each operates its own schools at the institutions under its control.

Under prior law, the institutions could apply for state unit funding to defray the cost of special education services. (A "unit" is a group of students receiving the same education program. The value of a unit is generally the sum of the annual salary of the unit's classroom teacher based on the state's former minimum teacher salary schedule in effect prior to 2001, an amount for fringe benefits equal to 15% of the salary allowance, a basic unit allowance, and a supplemental unit allowance.⁴⁸)

The act requires, instead, the payment of per pupil weighted funding to these institutions for school-age special education students in their custody. Each institution is to receive for each identified pupil an amount equal to the base-cost formula amount times the multiple assigned to the category of that pupil's disability (including the phase-in percentage). However, the act also specifies that an institution must receive in aggregate for all its school-age disabled children as much state funding as it did in fiscal year 2005 under unit funding.

The act leaves unchanged provisions for unit funding for preschool children receiving special education services from institutions, except for a change in the date for counting students in applicable units (see below).

Date for counting of students in handicapped preschool units

(R.C. 3317.05(D) and (E))

State and federal law both mandate a free, appropriate public education for preschool children who are identified as disabled, whom state law refers to as "handicapped preschool children."⁴⁹ School districts, educational service centers, state institutions, community schools, and county MR/DD boards all may receive unit funding (as described above) for services for handicapped preschool children. To be counted in a handicapped preschool unit, under prior law, a child had to be less than six years old as of December 1. The act provides instead that a child must be at least three but less than six years old as of either *September 30*, or *August 1* if the child's school district has adopted a resolution prescribing August 1

⁴⁸ *Under continuing law unit funding is used in making state payments to school districts, educational service centers, and county MR/DD boards for services for handicapped preschool children and to school districts and educational service centers for gifted education classes.*

⁴⁹ *R.C. 3323.01, not in the act.*

as the date by which children must be five or six years old, respectively, to be enrolled in kindergarten or first grade.⁵⁰

Unit funding for preschool special education related services

(R.C. 3317.05(C))

As noted above, school districts, state institutions, community schools, and county MR/DD boards are required to provide special education and related services for identified handicapped preschool children enrolled in their schools and may receive state unit funding for those services. However, prior law authorizing the Department of Education to grant units for preschool related services mentioned only "child study, occupational, physical, or speech hearing therapy, supervisors, and special education coordinators" as services for which related services units may be granted. The act clarifies that units may be granted for any of the related services defined in continuing state law regarding services to handicapped children. That law defines related services as including transportation, developmental, corrective, and other supportive services as may be required to assist a handicapped child to benefit from special education (including the early identification and assessment of disabilities in children, speech pathology and audiology, psychological services, occupational and physical therapy, physical education, recreation, counseling services, and medical services).⁵¹

Report on the number of handicapped preschool children served

(R.C. 3323.20)

The act requires the Department of Education, by July 1 of each year (beginning in 2006), to report to the General Assembly by electronic means the number of handicapped preschool children who received services during the previous fiscal year for which the Department paid a provider. The report must disaggregate the data according to each category of handicap (as used to determine the weights for purposes of funding special education and related services to school-age children) regardless of whether those weights are used to fund services

⁵⁰ Continuing law authorizes a district board of education to adopt August 1, instead of September 30, as the date by which a child must be either five or six years old, respectively, for admission to kindergarten or first grade (R.C. 3321.01, not in the act).

⁵¹ R.C. 3323.01, not in the act.

to those preschool children (see "*Special education weighted funding, Background*" above).⁵²

GRADS personnel allowance

(R.C. 3317.024(R))

School districts may receive an extra subsidy for operation of a "graduation, reality, and dual-role skill" (GRADS) program for pregnant and parenting students. The payment is the district's state share percentage times the "personnel allowance" times the full-time-equivalent number of GRADS teachers approved for the district by the Department of Education. The act specifies that the GRADS personnel allowance for fiscal years 2006 and 2007 is \$47,555 (which is the same amount prior law specified for fiscal years 2004 and 2005).

Repeal of equity aid statute

(repealed R.C. 3317.0213; conforming changes in R.C. 3314.08 and 3317.081)

The act repeals outright the Revised Code provision specifying the payment of equity aid.

From fiscal year 1993 through fiscal year 2005, an "equity aid" subsidy was paid to certain school districts with relatively low property wealth. Since fiscal year 1998, the state has been phasing out equity aid by reducing the number of districts receiving the subsidy and decreasing the number of extra mills equalized under it for each fiscal year. Prior law specified that no equity aid payments be paid after fiscal year 2005.

Recalculating school district valuations

(R.C. 3317.026, 3317.027, and 3317.028)

A school district's tax valuation may be recalculated after its state funding for a fiscal year has been calculated and even paid. The recalculations might be triggered by refunds paid to certain taxpayers, adjustments made due to valuation

⁵² *In almost all cases, the special education weights would not be used to calculate funding for services to handicapped preschool children because those children are served through a unit funded system. However, preschool and school-age students with autism who are awarded a scholarship under the Pilot Project Special Education Scholarship Program are counted in the category six special education ADM of the child's resident school district. That category is one of the six categories used to determine funding for school-age special education children. (See "**Pilot Project Special Education Scholarship Program**" below.)*

or assessment complaints filed by taxpayers, or creation of new tax exemptions. Each may reduce the actual revenue received by a district without a corresponding reduction in the value of the tax duplicate. There also may be fluctuations in tangible personal property valuation during a fiscal year that affect a district's revenue.⁵³ In all these cases, continuing law provides for a recalculation of a district's state aid to account for reduced property valuation.

These adjustments under prior law had to be paid on or before June 30 of the year the adjustments are made. But the act provides, instead, that they be paid on or before July 31 of the following fiscal year (thereby pushing the payment into the next fiscal year). The act also specifies that the recalculation of state aid for a district applies to the district's entire "SF-3 payment," which the act defines as comprising the aggregate of most state subsidies, less mandated adjustments and transfers.

One change that can prompt the recalculation of a district's state aid is an increase or decrease of 5% or more in the value of tangible personal property. The act provides that, beginning in fiscal year 2007, only such changes in *public utility* tangible personal property can prompt a recalculation.

Changes in charge-off supplement ("gap aid")

(R.C. 3317.0216)

Background

Certain school districts are not able to achieve 23 effective mills to cover their assumed local share of the base cost. In other cases, districts' effective tax rates will not cover their assumed local shares of special education, vocational education, and transportation funding. In such cases, the state provides a subsidy to make up the "gap" between the districts' effective tax rates and their assumed local shares for base-cost, special education, vocational education, and transportation.

Revenue considerations

For purposes of the supplement, under continuing law, the Department of Education is required to compare a district's charge-off amount (that is the amount presumed to be raised by 23 mills) and its local share of combined special education, vocational education, and transportation funding with the actual amount of taxes charged and payable for the district. If the tax revenue is not greater than

⁵³ *The act phases out the tangible personal property tax (see "Phase-out of tax on business personal property" below).*

either of the two presumed local shares, the Department must pay the district the difference.

The act adds to the revenue considered to be received by a school district, for purposes of calculating the supplement, the payments a school district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost due to the act's phase-out of the tangible personal property tax (see "*Phase-out of tax on business personal property*" below). It does not take into account any funds received for purposes other than current expenses.

Any district that receives payments for loss of tangible personal property tax for current expenses likely would receive less funding under the charge-off supplement than it would otherwise receive under the supplement.

Phase-down of supplement for districts passing taxes

Districts that receive this "gap aid" potentially face losing it if their voters approve new property or income taxes. New taxes can disqualify a district for the supplement in the first fiscal year that the taxes are counted in the funding formulas (for example, tax year 2005 taxes are used in fiscal year 2007 state funding calculations). The act prescribes a method to phase-down the payment over three years, rather than end it immediately.

Specifically, the Department of Education must make the payments to a district that previously received gap aid but becomes ineligible if (1) the ineligibility is the result of a property tax or income tax levy approved for tax year 2005 or later and (2) the Department determines that the levy exceeded, by at least one mill, the millage-equivalent amount of its previous gap aid payment. For the next three years, rather than losing its entire gap aid subsidy, the district would receive 75%, 50%, and 25%, respectively, of its last full gap aid payment.

A district may receive the phase-out payments only once. Therefore, if the district were again to qualify for gap aid, it could not also again receive the phase-down payments should a subsequent levy render it ineligible.

Bus purchase subsidies

(R.C. 3317.07)

School districts and county MR/DD boards are eligible to receive additional state subsidies to purchase buses to transport certain students who live more than one mile from school. Under prior law, a school district could receive 100% of the net cost of acquiring buses for the transportation of special education students and students attending nonpublic schools. County MR/DD boards also could



receive 100% of the net cost of acquiring buses for special education students. Some districts applying for the subsidy would be denied in order to remain within the appropriated amount.

In both cases, the act prescribes that the subsidy be paid on a "per pupil allocation." Presumably, under the act, the subsidy would be based on an allocation of the total amount appropriated for the subsidy on a per pupil basis among all district and county MR/DD boards that apply for the subsidy.

Reimbursement of school district share of Medicaid expenses

(R.C. 3317.023(O))

Federal law requires a recipient of federal funds for the provision of Medicaid services to pay a portion of the cost of those services with nonfederal funds. Payment for Medicaid services must be on a reimbursement basis after the services have been provided. The act requires the payment and deduction of a school district's share of such expenses upon reimbursement. Under the act, if the Department of Job and Family Services (ODJFS), which is responsible for distributing federal Medicaid reimbursements, presents to the Department of Education (ODE) a request for payment for the nonfederal share of reimbursements made to a school district, ODE must pay the amount of that request to the ODJFS and deduct the amount of the payment from the district's state aid account.

Annual reporting by state institutions operating vocational education programs

(R.C. 3317.052)

The Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, Department of Rehabilitation and Correction, and Department of Youth Services receive funding for vocational educational services, if they provide those services, on a "unit" basis. The act adds a requirement that each institution that receives vocational education unit funding annually must report to the Department of Education on the delivery of services and the performance of students and any other information required by the Department to evaluate the institution's vocational education program.

Cap on reimbursement of nonpublic school administrative expenses

(R.C. 3317.063)

Continuing law requires the Superintendent of Public Instruction to annually reimburse chartered nonpublic schools for the administrative and clerical costs they incur from complying with state mandates. Payment may be made only

upon the school's submission of an application containing evidence of the costs. Reimbursement payments had been limited by a statutory cap of \$250 per pupil for each school year. The act increases this cap to \$275 per pupil.

II. Scholarship Programs

Educational Choice Scholarship Pilot Program

(R.C. 3310.01 to 3310.17, and 3317.03; Section 206.10.03)

The act establishes the Educational Choice Scholarship Pilot Program to provide scholarships for primary and secondary students attending school in or assigned to "academic emergency" buildings for the sole purpose of paying tuition at chartered nonpublic schools.⁵⁴ This new pilot program does not apply to any student residing in a school district included in the Cleveland Scholarship Pilot Program. The first scholarships under the Educational Choice Pilot Program are to be awarded by the Department of Education for the 2006-2007 school year. In awarding scholarships each year, the Department first must award scholarships to eligible students who received them in the previous school year, then to students whose family incomes are at or below 200% of the federal poverty guidelines, and then on the basis of a lottery.⁵⁵

Eligible students

(R.C. 3310.01(B), 3310.03, and 3310.05)

To be eligible under the Educational Choice Scholarship Pilot Program, a student must meet one of the following conditions:

(1) The student is enrolled in a school building operated by the student's resident district (other than Cleveland) that the Department of Education declared to be in a state of academic emergency for three consecutive school years. The ratings used for this purpose are those issued in the most recent rating of school

⁵⁴ *The Ohio Department of Education (ODE) is required under continuing law to rate each school district's and public school building's academic performance based on standards adopted by the State Board of Education and the federal No Child Left Behind Act of 2001 (R.C. 3302.03).*

⁵⁵ *The 2005 federal poverty guideline for a family of three is \$16,090. 200% of that amount is \$32,180.*

buildings published prior to the first day of July of the school year for which a scholarship is sought and in the two preceding school years.⁵⁶

(2) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought and would be assigned to an academic emergency school building described in (1) above.

(3) The student is enrolled in a community school (public charter school) but otherwise would be assigned to an academic emergency school building described in (1) above.

A student who receives an Educational Choice scholarship remains eligible and may continue to receive scholarships in subsequent school years until the student completes grade 12, so long as the student's resident district stays the same, the student takes each state achievement or proficiency test prescribed for the student's grade level while enrolled in a chartered nonpublic school, and the student is not absent from that school for more than 20 days (not including absences due to illness or injury confirmed in writing by a physician).⁵⁷ Therefore, students who received a scholarship in the prior year can remain eligible even after their school is no longer categorized as under academic emergency. On the other hand, the Department must cease awarding *first-time* scholarships with respect to a school building that ceases to be in a state of academic emergency.

Scholarship amount

(R.C. 3310.08(A) and 3310.09)

The amount of each annual Educational Choice scholarship is the *lesser* of (1) the tuition charged by the chartered nonpublic school in which the student is enrolled or (2) a "maximum" amount specified in the act. That maximum amount in fiscal year 2007 is:

⁵⁶ *The Department of Education rates school districts and buildings in August of each year; so, for example, the third of the three consecutive performance ratings applying to scholarships for the 2006-2007 school year (which begins July 1, 2006) is the one published in August 2005.*

⁵⁷ *The act, therefore, requires each chartered nonpublic school that enrolls scholarship students to administer the state achievement and proficiency tests to those students and to report the results to the Department of Education (R.C. 3310.14). However, a school is not required to administer the tests to nonscholarship students, except for the 10th grade Ohio Graduation Tests, which are required for graduation from chartered nonpublic high schools under continuing law (see R.C. 3313.612, not in the act).*

- (a) \$4,250 for grades K through 8; and
- (b) \$5,000 for grades 9 through 12.

In future fiscal years, the maximum amount is to be inflated by the rate of increase in the base-cost formula amount from the previous fiscal year.

Financing of scholarships

(R.C. 3310.08(C) and (D) and 3317.03)

The act requires the resident school district of each student awarded an Educational Choice scholarship to report the number of its resident students who have received a scholarship. That number will be added to the district's base-cost calculation. This will credit the district with state base-cost funding. The act then requires the Department of Education to deduct \$5,200 from the district's state funding account for each of the district's students awarded a scholarship. The act states that this deduction is to fund scholarships under both the Educational Choice and the Cleveland pilot programs.

The Department of Education must disclose on the SF-3 form of a school district from which a deduction is made for Educational Choice scholarships both the aggregate and per pupil differences between (1) the district's state base-cost funding and (2) what its state base-cost funding would have been if the scholarship students had not been included in the district's formula ADM.

Number of scholarships

(R.C. 3310.17; Section 206.10.03)

Under the act, the General Assembly is to prescribe the maximum number of scholarships that may be awarded under the program in each year. The act specifies that, in fiscal year 2007, the maximum number of scholarships under the program is 14,000.

Scholarship payments

(R.C. 3310.08(B))

The act requires the Department of Education to pay to the parent of each eligible student awarded a scholarship, or to the student if at least 18 years old, periodic partial payments of the scholarship. The Department must proportionately reduce or terminate the payments for any student who withdraws from school prior to the end of the school year.

Excess tuition charges

(R.C. 3310.13)

The act prohibits a chartered nonpublic school from charging any Educational Choice scholarship student whose family income is at or below 200% of the federal poverty guidelines a tuition fee that is greater than the scholarship amount paid for that student.

On the other hand, it explicitly permits a school to charge any other student the difference between the scholarship amount and the school's regular tuition. Each school must permit a scholarship student's family, at the family's option, to provide volunteer services in lieu of cash to pay all or part of the school's tuition not covered by the scholarship.

Transportation of scholarship students

(R.C. 3310.04)

The act specifies that Educational Choice scholarship students are entitled to transportation to and from the chartered nonpublic schools they attend in the manner prescribed under continuing law. That law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and who live more than two miles from the school they attend. Districts may, but are not required to, transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus, from the district school the student would otherwise attend to the nonpublic school, is more than 30 minutes. Districts are eligible for state subsidies for transporting nonpublic school students.⁵⁸

Start-up; State Board of Education rulemaking authority

(R.C. 3310.16; Section 206.10.03)

The act requires the State Board of Education to adopt rules that prescribe procedures for the administration of the Educational Choice Scholarship Pilot Program. The act also states that the State Board or the Department of Education may not require chartered nonpublic schools to comply with any education laws or

⁵⁸ R.C. 3317.022 and 3327.01.

rules or other requirements that are not specified under the act's provisions if they otherwise would not apply to chartered nonpublic schools.⁵⁹

The State Board must adopt its rules so that they are in effect and the program is operational for the 2006-2007 school year. In the meantime, the Superintendent of Public Instruction, by September 1, 2005, must begin preparations to implement the program. The Superintendent must ensure that school districts, chartered nonpublic schools, students, and parents are notified of the program and how it may affect them. This information must be supplied in sufficient time for affected parties to meet deadlines imposed by the Superintendent.

Purpose statement

(R.C. 3310.06)

The act states that it is the policy adopted by the General Assembly that the Educational Choice Scholarship Pilot Program is one of several options available for students enrolled in academic emergency school buildings. It states that those students may choose to enroll in the schools of the student's resident district, in community schools, in the schools of another school district pursuant to an open enrollment policy, in chartered nonpublic schools with or without an Educational Choice scholarship, or in other schools as the law may provide. Those other choices might include, for example, enrolling in another school district or in some other type of private school and paying tuition to that district or private school.

Comparison with the Cleveland program

(R.C. 3310.05)

As noted above, a scholarship under the Educational Choice Scholarship Pilot Program is not available for any student whose resident district is the Cleveland Municipal School District, in which the existing Cleveland voucher pilot program is operating. The act states that the two pilot programs are separate and distinct, each with its own prescribed scholarship amount in recognition of its unique eligibility criteria. It states that the Cleveland program is a district-wide program that may award scholarships to students who do not attend district

⁵⁹ *Some requirements in continuing law already apply to these schools. For example, a chartered nonpublic school must comply with many but not all of the provisions that apply to school districts, such as high school curriculum and diploma requirements and immunization record requirements. In addition, all schools, regardless of whether they are public or private or are chartered or nonchartered, must comply with state and local health and safety regulations.*

schools that face academic challenges, whereas the proposed Educational Choice Scholarship Pilot Program is limited to students of individual district school buildings that do face academic challenges.

Changes to the Cleveland scholarship pilot program

Eligibility for scholarships

(R.C. 3313.975, 3313.976, 3313.977, and 3313.978)

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

Prior law limited eligibility for participation in the scholarship program to students in kindergarten through tenth grade. After tenth grade, students either would have to return to the public school to which they are assigned by the district superintendent, enroll in a community school, or pay full tuition at a private school.

The act expands eligibility for scholarships to eleventh graders beginning in the 2005-2006 school year and to twelfth graders in the 2006-2007 school year. Students must have been awarded a scholarship previously to receive one in the eleventh or twelfth grade.⁶⁰ The act also codifies a long-standing practice to allow new students to enter the scholarship program in any of grades K to 8.⁶¹

⁶⁰ R.C. 3313.975(C)(1). *Continuing law specifies that, in the event the scholarship program is terminated, students attending alternative schools are entitled to attend those schools through the highest grade served in the same manner as under the program, except that a parent can be charged tuition if no funds are appropriated for scholarships. While this entitlement existed only up to the tenth grade under prior law, the act extends it to the twelfth grade to correspond with the availability of the additional high school scholarships. (R.C. 3313.975(C)(2).) Also, under the act, eleventh and twelfth grade students who were enrolled in a private school in the previous year must be given priority for admittance to the school in the following year (R.C. 3313.977(A)(2)).*

⁶¹ R.C. 3313.975(C)(1).

Scholarship amount

(R.C. 3313.978(C)(1))

Under prior law, the amount of the Cleveland scholarship was the lesser of the tuition charged by the student's alternative school or an amount set by the Superintendent of Public Instruction not to exceed \$3,000 for grades K through 8 and \$2,700 for grades 9 through 12. The act retains those amounts for fiscal year 2006, but it increases the maximum amount of a scholarship beginning in fiscal year 2007 to \$3,450 for all grades K through 12.

Tutorial assistance grant amount

(R.C. 3313.978(C)(3))

Similarly, prior law limited the maximum amount of a tutorial assistance grant to 20% of the average basic scholarship amount under the program. The act retains this maximum grant amount for fiscal year 2006, but for fiscal year 2007 and thereafter, it prescribes that the maximum amount of a tutorial assistance grant is \$400.

Pilot Project Special Education Scholarship Program

(Section 206.09.84)

The budget act for the 2003-2005 biennium established a temporary pilot program to pay scholarships to the parents of certain autistic children to be used for services at public or nonpublic special education programs that are not operated by or for the child's resident school district.⁶² The act reauthorizes that program and increases the maximum amount of the scholarship to \$20,000 (from \$15,000 under prior law).

Under the program, as reauthorized in the act, in fiscal years 2006 and 2007, the Department of Education is required to pay upon application a scholarship to the parent of a child identified as autistic who is entitled to receive special education and related services at the child's resident school district in any grade from preschool to 12. The scholarship is to be used solely to pay part or all of the cost of sending the child to a public or nonpublic special education program instead of the one provided by the child's resident school district. The amount of the scholarship is the lesser of the amount charged by the special education

⁶² Section 41.33 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended.

program or \$20,000. The scholarship is to be used to pay for only those services specified in the child's "individualized education program."

The amount of the scholarship is to be deducted from the state aid account of the child's resident school district. The district, therefore, is authorized to count the child in the district's formula ADM and category six special education ADM. The district, then, retains the balance of any amount of state funding credited to the district after the scholarship amount is deducted.

III. 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. Community schools are funded with state funds that are deducted from the state aid accounts of the school districts in which the enrolled students are entitled to attend school. Community schools may not charge tuition.

A conversion community school, created by converting an existing school district school, may be located in and sponsored by any school district in the state. On the other hand, a "start-up" community school may be located only in a "challenged school district." A challenged school district is any of the following: (1) a "Big-Eight" school district, (2) a school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County).⁶³

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;

⁶³ R.C. 3314.02(A)(3). *The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.*

(5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or

(6) A federally tax-exempt entity under certain specified conditions.⁶⁴

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

Caps on community schools

(R.C. 3314.013(A)(3), (4), (5), and (8))

Under prior law, there was a statewide limit of 225 start-up community schools sponsored by entities other than the school districts in which they were located. That cap was to expire July 1, 2005.

The act extends the cap for two years to July 1, 2007, and increases it for that period to 30 more than the number of such schools that were open for operation as of May 1, 2005. As under prior law, the cap does not apply to community schools sponsored by the school districts in which they are located. However, the act establishes a separate statewide cap on the number of district-sponsored schools until July 1, 2007, which applies both to start-up schools and to conversion schools that are Internet- or computer-based community schools ("e-schools"). That cap is equal to 30 more than the number of such schools that were open for operation as of May 1, 2005. The act specifies that the existence of a cap or moratorium (see "Moratorium on new e-schools" below) on community schools does not prohibit an existing school from offering additional grades.

Lottery to select additional schools allowed under caps

(Section 206.10.10)

Within 30 days after the act's effective date, the Department of Education must conduct a lottery to select the 30 additional community schools allowed to open under each of the statewide caps. There must be two separate lotteries, one for schools sponsored by the school districts in which they would be located and one for schools sponsored by other entities. In either case, for a school to participate in the lottery, its sponsor must submit an application on the school's behalf. A community school is eligible for the lottery only if (1) the sponsor and the school's governing authority have entered into a contract, (2) the school is prepared to open for its initial year of operation in the 2005-2006 school year, and (3) selection of the school in the lottery would not cause the sponsor to exceed the

⁶⁴ R.C. 3314.015(B)(1) and 3314.02(C)(1)(a) through (f).

limit on the number of schools it may sponsor (see "*Limit on number of schools an entity may sponsor*" below).

Opening schools in excess of the caps

(R.C. 3314.014)

The act permits community schools in excess of the statewide caps to open under certain conditions. Specifically, once a statewide cap to which a community school would otherwise be subject has been reached, the school may still be established if it is run by an "operator" pursuant to a contract with the school's governing authority.⁶⁵ As defined by the act, an operator is an organization that manages the daily operations of the school. However, the act effectively limits the total number of schools that may open in excess of the caps because each operator may manage only one such school for each community school it manages on the date the caps are reached that has a performance rating of excellent, effective, or continuous improvement. An operator, for example, that manages two schools in continuous improvement and one effective school on that date could manage three schools in excess of the caps. The limit on the number of schools an operator may manage in excess of the caps is fixed on the date those caps are reached. In other words, if a community school managed by an operator achieves a performance rating of continuous improvement or better after that date, the operator's limit does not thereby increase. Conversion community schools that are not e-schools do not count toward an operator's limit because those schools are not subject to either statewide cap.

Moratorium on new e-schools

(R.C. 3314.013(A)(6) and (7))

The act prohibits any entity from sponsoring a new e-school between May 1, 2005, and the effective date of any standards enacted by the General Assembly governing the operation of e-schools. If a sponsor entered into a contract with an e-school and the school had not yet opened as of May 1, 2005, the contract is void and a new contract may not be entered into until the moratorium is over. The moratorium applies to start-up and conversion e-schools.

However, all qualified sponsors may renew any contracts with existing e-schools when those contracts are eligible for renewal. In addition, during the moratorium period, all qualified sponsors, except a tax-exempt entity, may assume

⁶⁵ *Nevertheless, a conversion community school that is an e-school may not open under any circumstances as long as the act's moratorium on new e-schools is in effect (see below).*

the sponsorship of existing e-schools formerly sponsored by other entities. The act retains a provision of former law prohibiting a tax-exempt entity from sponsoring any schools other than existing schools formerly sponsored by the State Board of Education until July 1, 2005. After that date, the act allows a tax-exempt entity to sponsor an existing or new community school as under prior law, but prohibits the entity from sponsoring a new e-school for the balance of the moratorium period.

Prohibition on operating school from a residential facility

(Section 206.10.11)

Until July 1, 2007, a community school that opens 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.

Criteria for approval of sponsors

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

Continuing law requires the Department of Education to adopt rules containing criteria for the approval of community school sponsors.⁶⁶ These rules must require an entity seeking approval for sponsorship to provide evidence of its ability and willingness to provide proper oversight. The act adds two new requirements for sponsors approved on or after June 30, 2005 (the act's effective date). First, entities seeking approval for sponsorship must have a record of financial responsibility and successful implementation of educational programs. Second, if the entity sponsors or operates schools in another state, at least one of those schools must be performing as well as or better than Ohio schools in academic watch, as determined by the Department.⁶⁷

⁶⁶ See *Ohio Administrative Code 3301-102-03*.

⁶⁷ *A school in academic watch does not meet the federal standard of adequate yearly progress and either meets 31%-49% of the performance indicators established by the State Board of Education or attains a performance index score set by the Department (R.C. 3302.03(B)).*

Limit on number of schools an entity may sponsor

(R.C. 3314.015(B)(1); Section 206.10.09)

While former law allowed an entity to sponsor any number of community schools, the act establishes limits on sponsorship. These limits are based on the number of schools an entity sponsored that were open for operation as of May 1, 2005. All new and existing sponsors must comply with the limits. The limit of an entity that sponsored more than 50 schools open for operation as of May 1, 2005, is decreased by one whenever one of its schools permanently closes, until the sponsor has a total of 50 schools. The act's limits on sponsors are shown in the table below.⁶⁸

Limits on Schools an Entity May Sponsor		
Number of schools sponsored by entity open as of May 1, 2005	Limit	Other conditions
50 or fewer	50 schools	
51-75	Number of schools sponsored by entity open as of May 1, 2005	Limit decreases by one for each school sponsored by entity that permanently closes until the entity sponsors 50 schools
More than 75	(1) Until June 30, 2006, number of schools sponsored by entity open as of May 1, 2005 (2) After June 30, 2006, 75 schools	Limit decreases by one for each school sponsored by entity that permanently closes until the entity sponsors 50 schools

⁶⁸ When an entity is approved to sponsor community schools, the Department of Education must notify the entity of how many schools it may sponsor. Existing sponsors must be notified of their respective limits within 30 days after the act's effective date.

If a sponsor exceeds its limit, the Department of Education must assist schools in excess of the limit in finding new sponsors. The schools that the sponsor must relinquish are those schools that most recently entered into a contract with the entity for sponsorship. If a school is unable to secure a new sponsor, the Department must assume sponsorship of the school. Under continuing law, the Department's term of sponsorship lasts until the school finds another sponsor, but no longer than two school years.⁶⁹

Deadline for adoption of contract

(R.C. 3314.02(D))

The act requires the contract between the sponsor and governing authority of a new community school to be adopted by March 15 prior to the school year in which the school will open.⁷⁰ This deadline only affects contracts adopted on or after September 29, 2005 (the provision's effective date). Therefore, a school whose contract is adopted after March 15, 2005, but before September 29, 2005, still would be able to open in the 2005-2006 school year.

Nullification of contract

(R.C. 3314.03(F))

Under the act, the contract between a community school and its sponsor becomes void if the school (1) fails to open for operation within one year after adoption of the contract or (2) permanently closes prior to the contract's expiration.⁷¹ Furthermore, the school may not enter into a contract with another sponsor. A school whose contract is nullified for one of these reasons does not count toward the statewide caps on community schools.

⁶⁹ R.C. 3314.015(C).

⁷⁰ A majority vote of both the sponsor's governing board and the school's governing authority is necessary to adopt the contract.

⁷¹ Under continuing law, a school's sponsor must suspend the school's operations for a violation of health and safety standards and may suspend them for (1) failure to meet student performance requirements, (2) fiscal mismanagement, (3) a violation of the contract or law, or (4) other good cause (R.C. 3314.072, not in the act). The act specifies that a school is not considered permanently closed because its operations have been temporarily suspended for one of these reasons.

Enrollment of community school students

(R.C. 3314.03(A)(6)(b) and 3314.08(L)(2))

Under prior law, a student was considered enrolled in a community school for state funding purposes on the date the student commenced participation in the school's learning opportunities following receipt of the appropriate documentation by the student's parent. The act specifies instead that a student is considered enrolled beginning on the *later* of that date or 30 days prior to the date on which the school enters the student into the Education Management Information System (EMIS).⁷² For example, if a student enrolls in a community school on October 15 but is not entered into EMIS until December 1, the school could not receive state funding for that student for the period of enrollment between October 15 and November 1.

The act retains law requiring a community school to automatically withdraw a student who misses 105 consecutive hours of learning opportunities without a legitimate excuse. However, it eliminates the 30-day period previously granted to the school for making the withdrawal. Therefore, under the act, a student must be withdrawn immediately after accruing the requisite number of missed hours.

Opening date for schools

(R.C. 3314.03(A)(25))

Under law retained by the act through June 30, 2006, a community school may open at any time during the school year. Beginning in the 2006-2007 school year, however, the act generally requires community schools to open for operation by September 30 each year. This restriction does not apply to schools whose mission is solely to serve dropouts, which may continue to open at any time during the school year. Otherwise, if a school fails to open by September 30 in its initial year of operation, the school's contract with its sponsor is void.⁷³ A school serving

⁷² EMIS is a statewide electronic database of student, building, personnel, and fiscal data about school districts and community schools maintained by the Department of Education (see R.C. 3301.0714).

⁷³ This provision of the act appears to conflict with the provision described above (see "**Nullification of contract**"), which gives a school one full year after adoption of the contract to open for operation without voiding the contract. Since the act's deadline for adoption of the contract is March 15 prior to the school year the school will open (see "**Deadline for adoption of contract**" above), nullifying a contract for failure to open by September 30 would give some schools less than one year to open, even if they adopt their contracts well before the March 15 deadline.

dropouts must open for its first year of operation within one year after the adoption of the contract to avoid nullifying the contract.

Changes regarding e-schools

Limit on daily hours logged by e-school students

(R.C. 3314.08(L)(3) and 3314.27)

Continuing law requires each community school to provide a minimum of 920 hours of learning opportunities to students per school year.⁷⁴ The act specifies that, in the case of students enrolled in an e-school, a student's time spent participating in learning opportunities over 10 hours within a 24-hour period does not count toward the 920 instructional hours due to that student. In other words, an e-school student who spends 12 hours a day engaged in the school's learning opportunities would only be credited with 10 hours of participation. If an e-school requires its students to participate in learning opportunities on the basis of days rather than hours, a minimum of five hours of student participation constitutes the equivalent of one day under the act.

E-school teachers

(R.C. 3314.21)

The act establishes two new requirements regarding the employment of teachers by e-schools. First, each e-school must retain an "affiliation" with at least one full-time "teacher of record" licensed by the State Board of Education. The act defines "teacher of record" as a teacher who is responsible for the overall academic development and achievement of a student and not merely the student's instruction in a single subject. Second, each e-school student must be assigned to at least one teacher of record, but no teacher of record may be primarily responsible for more than 125 students. The act retains prior law expressing the General Assembly's intent that teachers employed by e-schools conduct face-to-face visits with their students periodically throughout the school year.

Administration of state assessments to e-school students

(R.C. 3313.6410, 3314.25, and 3314.26)

As public schools, all community schools must administer the state-developed achievement tests and diagnostic assessments in the same manner as school districts. The act requires e-schools to provide each of their students a

⁷⁴ R.C. 3314.03(A)(11)(a).

location within 50 miles of the student's residence at which to take the achievement tests and diagnostic assessments.

Whenever an e-school student fails to participate in the spring administration of a grade-level achievement test (or any of the applicable proficiency tests, which were given for the last time in the 2004-2005 school year) for two consecutive school years, the act requires the school to withdraw that student from enrollment.⁷⁵ Upon withdrawal, the school must report the student's data verification code to the Department of Education (see "*Use of student data verification codes*" below). School district-operated schools in which students work primarily on assignments in a nonclassroom-based setting using an Internet- or other computer-based instructional method are also subject to this requirement under the act.

The Department must maintain a list of the data verification codes of all students who have been withdrawn from an e-school, or from a district-operated school that uses a computer-based instructional method, for failure to take achievement tests. Neither an e-school nor a district-operated school that primarily uses a computer-based instructional method may receive state funding for any student whose data verification code appears on the list. A student on the list may still enroll in an e-school or similar district-operated school, but the parent must pay tuition for the student in an amount equal to the state funds the Department determines the school would otherwise receive for that student. The school may withdraw the student for failure to pay tuition. Therefore, to receive a free education under the act, the student must enroll in a traditional school that relies on classroom-based instruction until the student completes high school.

Plan for special education services

(R.C. 3314.28)

Under the act, each e-school must submit to its sponsor a plan for providing special education and related services to disabled students enrolled in the school. Schools established after June 30, 2005 (the act's effective date) must submit the plan prior to the school's receipt of its first payment of state funds and annually thereafter by September 1. Existing schools must submit their plan by September 1 each year beginning in 2005.

⁷⁵ A school is not required to withdraw a student who was excused from taking the test because (1) the student took an alternate assessment designed for special education students or (2) the student is limited English proficient and was exempt from the test until the student had been enrolled in a U.S. school for one year (R.C. 3314.26(A); see also R.C. 3301.0711(C)(1) and (3)).

Within 30 days after submission of the plan, the school's sponsor must certify to the Department of Education whether the plan is satisfactory and, if not, that the sponsor will promptly assist the school in developing an acceptable plan. The sponsor also must provide assurance to the Department that it will monitor implementation of the plan and take corrective action if necessary. The Department must develop guidelines for the content and format of the plans.

Provision of computers to certain community school students

(R.C. 3314.08(N) and 3314.22)

Law generally unchanged by the act entitles each student enrolled in an e-school to a computer supplied by the school. If more than one child living in a household is enrolled in the school, however, the parent of those children may request less than one computer per child, as long as at least one computer is supplied to the household. The parent may amend this decision at any time during the school year. In that case, the school must provide any additional computers requested by the parent, up to one computer per child enrolled in the school, within 30 days. Each computer supplied by the school must be equipped with a filtering device that blocks Internet access to materials that are obscene or harmful to juveniles.⁷⁶ An e-school student is not considered enrolled for purposes of state funding until these requirements have been met.

The act extends this entitlement to certain students enrolled in community schools that are not e-schools. Under the act, if a traditional ("brick and mortar") community school provides its students with nonclassroom-based learning opportunities using an Internet- or other computer-based instructional method and requires those students to access the learning opportunities from their homes, the school must supply each participating student with a computer on the same terms applicable to e-schools. This requirement is waived if (1) the nonclassroom-based learning opportunities that a student must participate in from home are supplemental in nature or do not constitute a "significant" portion of the total learning opportunities provided to the student by the school and (2) the student already has a computer to use at home. As with an e-school, a traditional community school student who is eligible for a computer is not considered enrolled until the computer has been supplied and is fully operational.

⁷⁶ R.C. 3314.21(C)(1).

The act also prohibits a community school from providing a stipend or other substitute in lieu of supplying an actual computer to a student.⁷⁷ This prohibition applies to both e-schools and other community schools that must provide a student with a computer under the act's extension of the entitlement.⁷⁸

Sanctions for poorly performing community schools

(R.C. 3314.03(A)(4), 3314.35, and 3314.36)

The act requires additional assessments of students enrolled in certain community schools to measure their academic progress during the school year and establishes sanctions in some cases for schools in which student progress is not sufficient. The required assessments are in addition to the state achievement tests and diagnostic assessments, which community schools must administer under continuing law. Similarly, the sanctions created by the act must be imposed along with other sanctions prescribed by the federal No Child Left Behind Act of 2001 or accountability provisions of state law.⁷⁹

Additional reading and math assessments

(R.C. 3314.35(A) to (D))

Under the act, beginning in the 2006-2007 school year, a community school must administer reading and math assessments to students in grades 1 to 12 if the school either:

- (1) Has a performance rating of continuous improvement, academic watch, or academic emergency;
- (2) Has not been in operation for at least two full school years; or

⁷⁷ *The act states that enactment of this prohibition is meant solely to clarify the entitlement provision and not to change the meaning of that provision (R.C. 3314.22(A)(1)).*

⁷⁸ *As under former law, the act authorizes the provision of less than one computer per child at the parent's request in cases where a school enrolls children who live together. The act specifies that the children must be living in the same "residence," rather than the same "household" as under former law, to trigger the authorization. This change in terminology does not appear to be substantive.*

⁷⁹ *Such federal and state sanctions may include, among others, (1) instituting a new curriculum, (2) decreasing a school's authority to manage its operations, (3) extending the school day or year, (4) replacing staff, (5) contracting with an outside organization to run the school, or (6) closing the school (see R.C. 3302.04(E), not in the act).*

(3) Does not have a performance rating based on achievement test data because it does not offer a grade level in which an achievement test is given or the Department of Education has determined that the number of students enrolled in grades that take an achievement test is too small to yield statistically reliable data about those students' test performance.

A school must give the same assessment in both the fall and spring of the school year to measure student academic growth over that period. Each school must select the reading and math assessments it gives from a list of nationally normed assessments approved by the Department.⁸⁰ The costs of administering and scoring the assessments are the school's responsibility. Each school must report student scores to the Department.

Sanctions for insufficient student progress

(R.C. 3314.36(A), (B), (C), and (E))

To determine which community schools face sanctions, the State Board of Education, by July 1, 2006, must adopt rules establishing "reasonable" standards for expected gains in student achievement from the fall to spring assessment periods and for expected gains in the graduation rate. Community schools that have been open at least two school years and are in academic watch or academic emergency or do not have a performance rating based on achievement test data face sanctions if (1) the school offers a high school diploma but is not showing the expected gains in its graduation rate established by the State Board or (2) the percentage of the school's population showing the State Board's expected gains in student achievement on the reading or math assessments is less than 55%. The act's sanctions are shown in the table. For the first two years, they apply only to e-schools. The closure of a school after the third year of failure to make expected gains applies to both traditional ("brick and mortar") community schools and e-schools.

⁸⁰ *The Department may include assessments in subject areas other than reading and math on the list for optional use by community schools.*

Consecutive years of failure to make expected gains in student achievement		
1	2	3
Sanctions for community schools	<p>(1) E-school prohibited from enrolling more students than it enrolled at end of previous school year.</p> <p>(2) E-school must withdraw at the end of the school year any student for whom one of the following applies, unless the student's parent agrees to pay tuition in an amount equal to the state funds the school otherwise would receive for the student:</p> <p>(a) For two consecutive school years, the student has taken the reading and math assessments but failed to show the expected achievement gains in both subjects;</p> <p>(b) For two consecutive school years, the student failed to take one or more of the reading and math assessments; or</p> <p>(c) For one of two consecutive school years, the student took the reading and math assessments but failed to show the expected achievement gains in both subjects and, in the other school year, failed to take one or more of the assessments.</p>	<p>(1) E-school prohibited from enrolling more students than it enrolled at end of previous school year.</p> <p>(2) E-school ineligible for state funding for any student who was required to be withdrawn at the end of the previous school year or for whom tuition is owed.</p> <p>(3) School (whether a "brick and mortar" community school or an e-school) must permanently close at end of school year.</p> <p>(4) Sponsor's limit on number of schools it may sponsor is reduced by one, if the sponsor has more than 50 schools (see "<u><i>Limit on number of schools an entity may sponsor</i></u>" above).</p>

In calculating whether a school makes the expected gains, the Department of Education must include the scores of all students who participated in both the fall and spring assessments. If a school's participation rate for any grade level is less than 90%, the Department must assume a score of zero for each student that must be added to the participation rate to bring that rate up to 90%. Therefore,

schools are more likely to fail to make the expected gains, and be subject to sanctions, if they do not ensure that their students take the assessments.

Optional use of progress measure by other community schools

(R.C. 3314.03(A)(4), 3314.35(E), and 3314.36(D))

If a community school has a performance rating of continuous improvement or higher based on achievement test data, the school is not subject to the act's sanctions. Nevertheless, the school's sponsor may choose to have the school administer the additional reading and math assessments and evaluate the school's performance using the goals for student achievement described above. The length of time the school will be evaluated in this manner must be specified in the school's contract with the sponsor. But if a sponsor opts to have them administered, it must be for a minimum of three years. Unless the contract specifies otherwise, a sponsor need not impose any of the act's sanctions on a school for failure to meet the goals. Presumably, though, the sponsor may consider the school's performance when deciding whether other actions, such as suspension of the school's operations or contract termination, are warranted.

Procedures for closing a community school

(R.C. 3314.015(E))

The act requires the Department of Education to adopt procedures for permanently closing a community school. These procedures must cover the reporting of data to the Department, handling of student records, distribution of assets in the manner prescribed by law, and other pertinent matters.⁸¹

District report card data for conversion schools serving at-risk students

(R.C. 3302.03(C))

Under law generally retained by the act, the academic performance data of students enrolled in a conversion community school is combined with the data for students enrolled in the sponsoring school district in determining the district's report card rating. The act creates an exception to this requirement. Under the act, the data for a conversion school is not combined with the sponsoring district's data if the school primarily enrolls students ages 16 to 22 who are high school dropouts

⁸¹ Continuing law specifies that the assets of a closed community school must be distributed in the following order: (1) to employees' retirement funds, (2) to employees, (3) to private creditors who are owed compensation, and (4) to the General Revenue Fund (R.C. 3314.074).

or are at risk of dropping out due to poor attendance, disciplinary problems, or suspensions. However, as in prior law, the performance data of students in such a conversion school must be included on the sponsoring district's report card, even though that data would not affect the district's performance rating.

Annual report of expenditures for special education services

(R.C. 3314.12)

The act requires the sponsor of a community school to submit an annual report to the Department of Education describing the special education and related services provided by the school to its students during the previous fiscal year and the school's expenditures for those services. The report is due by November 1 and must be submitted in accordance with guidelines adopted by the Department.

Community school to serve autistic students and non-disabled students

(R.C. 3314.03(A)(5) and (19), 3314.06, and 3314.061)

The act permits the establishment of a community school to simultaneously provide (1) special education and related services to autistic students and (2) regular educational programs for non-disabled students. The contract between the sponsor and governing authority of such a school must specify the school's admission standards, including the target ratio of autistic students to non-disabled students and the total number of each type of student the school may enroll. Despite these targets, the school may not deny admission to a disabled student on the basis of the student's disability, even if the disability is not autism, unless the school is fully enrolled. As required by continuing law for all community schools, if the applicants for enrollment exceed the school's capacity limits, the school must admit students by lottery after giving preference to students enrolled the previous year and students residing in the school district where the school is located. However, since the school sets different capacity limits for autistic and non-disabled students, it must hold separate lotteries for each group.

State payments to community schools

(R.C. 3314.08(C), (D), and (F), 3314.084, 3314.085, and 3314.13)

Under law retained in part by the act, community schools receive various state payments, including base-cost funding, special education and vocational education weights, handicapped preschool and gifted units, parity aid, and Disadvantaged Pupil Impact Aid (DPIA), which the act renames "poverty-based assistance." In most cases, these payments are deducted from the state aid accounts of the school districts in which the community school's students are

entitled to attend school and paid to the community school by the Department of Education.

Traditional ("brick and mortar") community schools remain eligible for these payments under the act. However, the act prohibits e-schools from receiving (1) vocational education weighted funding, (2) parity aid, and (3) poverty-based assistance, including funding for all-day kindergarten. E-schools retain eligibility under the act for state base-cost and special education payments, as well as handicapped preschool and gifted units.

E-school expenditures for instruction

(R.C. 3314.085)

Beginning in fiscal year 2007 (2006-2007 school year), each e-school must spend at least the per pupil amount designated for base classroom teachers (see "**New "building blocks" methodology**" above) on instructional purposes, including (1) teachers, (2) curriculum, (3) academic materials other than computers and filtering software, and (4) other purposes designated by the Superintendent of Public Instruction. E-schools annually must report their expenditures for instruction to the Department of Education. If the Department determines that an e-school has failed to comply with the expenditure or reporting requirements, the e-school must pay a fine equal to 5% of the total state payments to the school in the fiscal year of noncompliance or the amount the school underspent on instruction, whichever is greater. The Department may cancel the fine, however, if the e-school develops and implements a compliance plan approved by the Department. The Department must offer an e-school an opportunity for a hearing prior to assessing any fine and may withhold future state payments to the school to collect the fine.

Elimination of special education funding guarantee

(R.C. 3314.08(D)(2))

Under prior law, each community school was guaranteed at least as much in aggregate state base-cost and special education weighted funding for students receiving special education and related services as the school received in fiscal year 1999. The act retains this funding guarantee for fiscal year 2006, but eliminates it thereafter. Therefore, beginning in fiscal year 2007, each community school will receive the amount of state base-cost and special education weighted funding calculated under the funding formulas applicable to that fiscal year.

Payments for a child enrolled in a community school but also living in a residential facility

(R.C. 3314.084)

The act establishes procedures for paying state funds to a community school for a student enrolled in the school and living in a residential "home."⁸² Those procedures specify that the student's school district of residence, which is generally the district where the student's parent resides, must count the student in its average daily membership (ADM) rather than the district where the student is living in the residential home. Therefore, the Department must deduct the amount of state funds owed to the community school for that student from the state aid account of the student's district of residence.

Poverty-based assistance for limited-English proficient students

(R.C. 3314.08(C)(6) and (D)(7))

As under prior law for the DPIA subsidy, the act directs that per pupil amounts of the new components of poverty-based assistance be transferred to community schools for students whose resident school districts receive this subsidy. The Governor vetoed a portion of the language concerning transfer of poverty-based assistance for limited-English proficient students. The veto left intact the principal instruction that a per pupil amount of the subsidy be transferred for each limited-English proficient student enrolled in a community school (if the student's resident district actually receives the subsidy), but deleted the instruction that the per pupil amount is the amount actually calculated and paid to the school district for each limited-English proficient student (from \$264 to \$528 in fiscal year 2006, depending on the district's poverty index). That leaves the act silent on how the Department must calculate the per pupil amount for transfer to community schools.

Temporary subsidy for community schools that enroll a high number of severe behavior handicapped students

(Section 206.09.82)

Although community schools receive funds in addition to the formula amount for each special education student they enroll, an additional subsidy is

⁸² A "home" is considered to be a home, institution, foster home, group home, or other residential facility that is maintained by the Department of Youth Services or is licensed or otherwise authorized by the state to receive and care for children (R.C. 3313.64, not in the act).

available under the act for certain community schools to assist them in meeting special education costs. The act establishes a subsidy for fiscal years 2006 and 2007 for any community school in which the number of students receiving special education and related services for "severe behavior handicap" conditions (SBH students) in each of those fiscal years is at least 50% of the total number of students enrolled in the school. This subsidy is *not* deducted from any amounts calculated for any school district. The amount of the subsidy for each fiscal year is the difference between the aggregate amount calculated for all the SBH students enrolled in the community school for that fiscal year and the aggregate amount calculated for such students for fiscal year 2001. If the difference is a negative number, the amount of the subsidy is zero.

For fiscal year 2001, the special education weight attributed to a SBH student was 3.01, but for fiscal years 2006 and 2007, that weight is 1.5926.⁸³ Even though the formula amounts for fiscal years 2006 and 2007 are higher than for fiscal year 2001, the reduced SBH weights could result in lower payments to community schools for each SBH student than in fiscal year 2001, when the special education weights were higher.⁸⁴ The act, then, would essentially hold these community schools harmless for their fiscal year 2001 per pupil aid for SBH students. A similar provision was enacted for the 2002-2003 and 2004-2005 bienniums.⁸⁵ Under the act, each subsidy must be paid from the Department of Education's appropriation for base-cost funding.

Repeal of outdated law regarding pilot project community schools

(R.C. 3314.02(G)(2) and repealed R.C. 3314.15)

In 1999, when the community school pilot project was formally eliminated, community schools established under the pilot project were placed under the Community School Law that applied to community schools in the rest of the state. The pilot project schools, however, were allowed to continue operating under their original contracts with their sponsors until those contracts expired. When those contracts were renewed, they had to conform to the Community School Law. The act repeals the statute dealing with this transition period since all community

⁸³ *Continuing law sets the full weight for a SBH student at 1.7695, but all special education weights are phased in under the act at 90% of their full value in FY 2006 and FY 2007 (R.C. 3317.013).*

⁸⁴ *Under the act, the formula amount for fiscal year 2006 is \$5,283 and for fiscal year 2007 is \$5,403 (R.C. 3317.012). For fiscal year 2001, that amount was \$4,294.*

⁸⁵ *Section 38 of Am. Sub. H.B. 405 of the 124th General Assembly and Section 41.32 of Am. Sub. H.B. 95 of the 125th General Assembly.*

schools have been required to comply with the statewide Community School Law since July 1, 2003.

The act also retains prior law that addressed the continued existence of community schools established under the pilot project but located in a county contiguous to the pilot project area (Lucas County).⁸⁶ As under former law, those schools may continue to operate even if they are not located in a challenged school district, provided they comply with the Community School Law.

IV. Other Education Programs

Later administration of spring achievement tests

(R.C. 3301.0710; Section 612.09)

Beginning in the 2006-2007 school year, the act requires the spring administration of the *elementary*-level achievement tests generally to begin no earlier than Monday of the week of May 1. It further requires the State Board to designate consecutive days for the administration of those tests within each grade. The act does not change the March administration dates for the Ohio Graduation Tests (OGT).

However, the act creates exceptions to the general testing periods for special education students and limited English proficient students. These exceptions apply to all achievement tests, including the OGT, starting in the 2006-2007 school year. For special education students who take an alternate assessment, instead of the regular achievement test, those assessments must be completed and school districts must submit them to the test scoring company hired by the Department of Education by April 1.⁸⁷ Limited English proficient students may be tested one week earlier than the general testing period at the State Board of Education's discretion.

⁸⁶ *The pilot project law allowed a community school to locate its facility in a county contiguous to Lucas County as long as the school enrolled students who would otherwise be enrolled in a Lucas County school district (Section 50.52 of Am. Sub. H.B. 215 of the 122nd General Assembly).*

⁸⁷ *Under continuing law, a special education student may be excused from taking an achievement test if no "reasonable accommodation" can be made to enable the student to take the test and the student's individualized education program (IEP) specifies an alternate assessment approved by the Department. An alternate assessment must produce measurable results comparable to those produced by the achievement tests. (R.C. 3301.0711(C)(1).)*

Deadlines for submission of tests and return of scores to districts

(R.C. 3301.0711(G); Section 612.36.03)

Prior law granted the Department of Education a maximum of 60 days after the administration of an achievement test to score that test and inform school districts of students' scores. The act maintains this 60-day deadline for the fall and summer administrations of the third grade reading achievement test and for administrations of the OGT. For all other achievement tests, however, the act shortens the deadline for returning test scores beginning in the 2006-2007 school year. Starting that year, students' scores from the spring administrations of the tests must be returned to districts by June 15. Due to the earliest possible administration date of April 26 for most students, this deadline would allow a maximum of 50 days to score the elementary-level tests and report the results to school districts. The act also specifies that the test results may be reported to districts by either the Department or the test scoring company with which it contracts.

To meet the shortened deadline for returning student scores after the spring administrations of the elementary-level tests, the act requires districts to submit those tests to the test scoring company under contract with the Department no later than the Friday after the tests are given. Tests given during the make-up period, which is the nine days following the scheduled test date, must be submitted by the Friday after the students take the make-up test.

Use of student data verification codes

(R.C. 3301.0711(A) and (I), 3301.0714(D), and 3301.12; Section 612.36.03)

Under continuing law, each school district or community school is required to assign a unique data verification code to every student for purposes of reporting student-level data to the Education Management Information System (EMIS). Except as necessary to assign the data verification code, personally identifiable student information may not be reported to any person who is not employed by a school district or data acquisition site and authorized to have access to that information.⁸⁸

The act makes several changes regarding the use of data verification codes. First, it requires each achievement test to include the data verification code of the student to whom it is administered. Second, it allows employees of companies hired by the Department of Education to grade the achievement tests to have

⁸⁸ *Data acquisition sites provide administrative computer services, including EMIS data reporting, to school districts and other education entities.*

access to students' personal information. This access presumably would enable a test scoring company to match a test booklet or answers with a particular student by using the data verification code. Third, the act prohibits test scoring companies from releasing students' test results except for the purpose of reporting the scores to districts. The State Board of Education may require use of the data verification codes to protect the confidentiality of student test scores.

Finally, the act permits studies and research projects conducted by the Department or a contracting entity to include analysis of EMIS data. The studies or projects, however, must maintain the confidentiality of student data by using the students' data verification codes. The act explicitly prohibits the Superintendent of Public Instruction, the Department, the State Board, or an entity conducting a study or project on their behalf from having access to a student's name, address, or social security number while analyzing student data. As noted above, this prohibition does not apply to a test scoring company.

Public release of achievement tests

(R.C. 3301.0711(N); Section 612.36.03)

Under continuing law, achievement tests become public records on July 1 (or July 16 for the third grade reading test) following their administration. However, test questions that are not used to compute a student's score are not public records and must be redacted from the tests prior to their release.⁸⁹

The act places additional restrictions on the public release of achievement tests. As the elementary-level tests are phased in through 2007, only the initial administration of each test is subject to public release in its entirety (except for questions that do not count toward a student's score). On subsequent administrations of those tests, a minimum of 40% of the questions used for scoring the test must become a public record. Questions that the Department of Education determines will be needed for reuse on future tests are not public records and must be redacted. The spring administration of the OGT is a public record, but the fall and summer administrations of the OGT are not.

⁸⁹ *Test questions not included in a student's score are field test questions, which are used to determine the validity of proposed questions, and anchor questions, which are included on various versions of the same test to ensure they are of comparable difficulty (R.C. 3301.0711(N)(2) and (3)).*

Elimination of certain diagnostic assessments

(R.C. 3301.079 and 3301.0715)

Prior law required the State Board of Education, by July 1, 2008, to adopt diagnostic assessments for grades K through 2 in reading, writing, and math, and for grades 3 through 8 in those subjects plus science and social studies, except that a diagnostic assessment was not required for any grade level and subject in which an achievement test is given. The act eliminates the requirement that the State Board adopt diagnostic assessments for grades 3 through 8, except in third grade writing. According to the Department of Education, the third grade writing assessment and the K through 2 assessments have been developed and provided to districts and community schools. The remaining diagnostic assessments, which the act eliminates, had yet to be developed. The effect, therefore, is to cancel development of the following diagnostic assessments:

- Science and social studies for grade 3;
- Science and social studies for grade 4;
- Writing for grade 5;
- Writing, science, and social studies for grade 6;
- Science and social studies for grade 7; and
- Writing for grade 8.

The changes do not affect which students must take the remaining assessments or the requirement to provide intervention services to struggling students.

Early childhood education programs

Elimination of Title IV-A Head Start and Head Start Plus programs

(repealed R.C. 3301.31, 3301.33, 3301.34, 3301.35, 3301.36, 3301.37, and 3301.38; R.C. 121.37, 3301.311, 3301.32, 4511.75, 5104.01, 5104.02, and 5104.32)

Head Start programs provide instruction and health and social services to preschool children from low-income families. Local agencies, including school districts, may receive direct grants from the federal government to operate Head Start programs. In addition, prior to the act, the state Department of Education

operated two Head Start programs, known as "Title IV-A Head Start" and "Title IV-A Head Start Plus," in accordance with an interagency agreement with the Department of Job and Family Services. These two programs were funded with federal TANF moneys allocated by the state.⁹⁰ Title IV-A Head Start provided traditional Head Start services during the school year. Title IV-A Head Start Plus offered year-round Head Start services along with child care.

The act eliminates the Title IV-A Head Start and Title IV-A Head Start Plus programs. The elimination of the state-funded Head Start programs generally does not affect traditional Head Start programs funded by direct federal aid. But the act requires each agency operating a federally funded Head Start program to meet the state criteria for, and be licensed as, a child day-care center.

Qualifications of staff for preschool and early learning programs

(R.C. 3301.311)

Under prior law no Head Start program could receive any state funds unless half of the staff members employed by that program as teachers were working toward an associate degree of a type approved by the Department of Education, and beginning in fiscal year 2008, no Head Start program could receive any state funds unless every staff member employed by that program as a teacher had attained such a degree.

Under the act, head start programs no longer are required to meet these requirements, but preschool programs, early childhood education programs, and early learning programs are. Under the act, after July 1, 2005, no preschool program, early childhood education program, or early learning program may receive any state funds unless half of the staff members employed by that program as teachers are working toward an associate degree of a type approved by the Department of Education. Beginning in fiscal year 2008, no such program may receive any state funds unless every staff member employed by that program as a teacher has attained such a degree. In addition, after July 1, 2010, no such program may receive any state funds unless half of the staff members employed by the program as teachers have attained a bachelor's degree of a type approved by the Department.

⁹⁰ TANF is a block grant program authorized by Title IV-A of the Social Security Act, 42 U.S.C. 601, that provides "temporary assistance for needy families." The program provides federal funds to states to serve low-income families with children.

TANF-funded Early Learning Initiative

(Sections 206.09.54 and 206.67.12)

The act establishes the Early Learning Initiative, paid for with federal TANF funds, to provide early learning programs and child care to certain TANF-eligible children.⁹¹ The act specifies that early learning programs may provide early learning services on a full-day basis, a part-day basis, or both a full-day and part-day basis. As defined by the act, early learning programs provide early learning services that are allowable under Title IV-A of the Social Security Act but are not considered "assistance" under federal regulations.⁹² The Initiative is administered by the Department of Education and the Department of Job and

⁹¹ *As used in the act, a TANF-eligible child is a child who is at least three years of age but not of compulsory school age or enrolled in kindergarten, is eligible for services under Title IV-A of the Social Security Act, and whose family income does not exceed 185% of the federal poverty line at application. If the family income of a child receiving early learning services under the early learning initiative subsequently exceeds 195% of the federal poverty line, the child ceases to be eligible for an early learning program.*

⁹² *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).)



Family Services in accordance with an interagency agreement and rules adopted by the Department of Job and Family Services in consultation with the Department of Education.⁹³ The joint rules for the Early Learning Initiative must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Department of Education duties. The act directs the Department of Education to define the early learning services that will be provided to TANF-eligible children through the Early Learning Initiative. In addition, the Department of Education must establish early learning program guidelines for school readiness to evaluate early learning programs.

When the Department of Education approves an early learning agency, the Department must determine the number of TANF-eligible children the agency will serve and report that number to the Office of Budget and Management and the Department of Job and Family Services.

Department of Job and Family Services duties. The Department of Job and Family Services is responsible for reimbursing early learning agencies for costs associated with their early learning programs. In reimbursing early learning agencies, the Department must ensure that all funds paid to an agency are solely for Title IV-A services provided to TANF-eligible children. In calculating reimbursements, the Department must reimburse an early learning agency for up to 25 days per year in which an eligible child is absent from the early learning program on a day the child is scheduled to attend the program.

The act directs the Department of Job and Family Services, in consultation with the Department of Education, to do all of the following:

(1) Adopt rules⁹⁴ regarding the establishment of co-payments for families of eligible children whose family income is more than 165% of the federal poverty line but equal to or less than 195% of the federal poverty line;

⁹³ *The Department of Job and Family Services is the single state agency to administer Title IV-A programs in Ohio. Other state agencies, however, may administer Title IV-A programs if they enter into an interagency agreement with the Department of Job and Family Services to administer the program under the Department's supervision. Each agency administering a Title IV-A program under the Department's supervision must comply with federal and state requirements regarding program eligibility, use of funds, allowable benefits and services, limitations on administrative costs, and audits. (R.C. 5101.80 and 5101.801.)*

⁹⁴ *All of the rules the Department adopts must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).*

(2) Adopt rules providing an exemption from co-payment requirements for families whose family income is equal to or less than 165% of the federal poverty line;

(3) Adopt rules establishing reimbursement rates for early learning agencies based on the attendance of eligible children. The Governor vetoed a provision that would have codified reimbursement rates as follows: (a) if an eligible child attends 25 or more hours in a given week, the weekly reimbursement must be not less than \$200.73, (b) if an eligible child attends 15 or more hours but less than 25 hours in a given week, the weekly reimbursement rate must not be less than \$160.58, and (c) if an eligible child attends less than 15 hours in a given week, the hourly reimbursement rate must not be less than \$8.03.

(4) Adopt rules defining "weekly attendance rate" for the purpose of reimbursing early learning agencies;

(5) Establish a caretaker employment eligibility requirement for participation in the Early Learning Initiative that specifies the minimum number of hours that the caretaker of the eligible child must be employed, specifies the time period over which the minimum number of hours is to be measured; and permits a limited number of "gap days";⁹⁵

(6) Establish a deadline for the submission of applications to be an early learning agency that occurs after the effective date of those provisions if, on the effective date of the ELI provisions, no early learning agencies have been approved for a given county.

Finally, the Department of Job and Family Services must provide up to 10,000 slots of services for eligible children in fiscal year 2006 and up to 12,000 slots of services for eligible children in fiscal year 2007 through the Early Learning Initiative. In each fiscal year, the Department must allocate at least 17 slots of services to each Ohio county.

Joint duties. In consultation with each other, the Department of Job and Family Services and the Department of Education must develop an application form and criteria for the selection of early learning agencies to provide early learning programs. Early learning agencies must be approved by the Department of Education to receive funding through the Initiative. Each early learning agency, or each provider with which the agency subcontracts for the operation of an early learning program, must be licensed or certified by the Department of Education as

⁹⁵ *The Department of Job and Family Services must periodically review this "gap day" requirement to ensure that it complies with federal law and regulations.*

a preschool or by the Department of Job and Family Services as a child day-care center.

County department of job and family services duties. 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. The eligibility determination must be made within 15 days of the county department receiving a completed application. The county departments of job and family services must also establish co-payment requirements in accordance with the rules adopted by the Department of Job and Family Services in consultation with the Department of Education.

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

- (1) Meet certain teacher qualification requirements;
- (2) Align curriculum to the Department of Education's early learning content standards;
- (3) Meet any diagnostic assessment requirements that apply to the program;
- (4) Require teachers, except teachers enrolled and working to obtain a degree, to attend a minimum of 20 hours per year of professional development as prescribed by the Department of Education regarding the implementation of content standards and assessments;
- (5) Document and report child progress;
- (6) Meet and report compliance with the early learning program guidelines for school success.

Contract, corrective action. Prior to providing an early learning program, each early learning agency must enter into a contract with the Department of Education and the Department of Job and Family Services outlining the terms and conditions applicable to the provision of Title IV-A services. This contract also must include:

- (1) The respective duties of the early learning agency, the Department of Education, and the Department of Job and Family Services;
- (2) Requirements regarding the use of and accountability for TANF funds;

(3) A requirement that the early learning agency's costs for developing and administering an early learning program cannot exceed 15% of the total approved program costs;

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

(5) The method of reimbursing the early learning agency for program costs which must be consistent with the Department of Job and Family Services reimbursement rules;

(6) Audit requirements;

(7) Provisions for suspending, modifying, or terminating the contract;

(8) A requirement that a child enrolled in a Head Start Plus program during fiscal year 2005 be given higher priority if the child enrolls in an early learning program and is TANF-eligible.

If an early learning agency, or a provider with which the agency subcontracts, substantially fails to meet the Department of Education's early learning program guidelines for school readiness or otherwise exhibits below average performance, the early learning agency must implement a corrective action plan approved by the Department. If the agency does not implement a corrective action plan, the Department of Education may direct the Department of Job and Family Services to withhold funding from the agency or either department may suspend or terminate the agency's contract.

Early Learning Initiative and publicly funded child care. The act specifies that the provision of early learning services in a part-time early learning program does not prohibit or otherwise prevent an individual from obtaining certificates for payment that the individual may use to purchase services from any provider qualified to provide publicly funded child care.

If on or after December 31 of each fiscal year, the Director of Budget and Management, in consultation with the Director of Job and Family Services and the Superintendent of Public Instruction, determines that there is a balance of funds in the Early Learning Initiative in either fiscal year 2006 or fiscal year 2007, the Director of Budget and Management may approve the use of the funds by the Department of Job and Family Services to provide publicly funded child care.

State-funded early childhood education programs

(Section 206.09.06)

The act establishes a GRF-funded program 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.⁹⁶ Program providers may include school districts and educational service centers (ESCs). 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 "**Qualifications of staff for preschool and early learning programs**" above);

(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;⁹⁷

(4) Require teachers, except for those working toward an associate or bachelor's degree in a related field, annually to attend at least 20 hours of professional development regarding the implementation of content standards and assessments;

(5) Document and report child progress; and

(6) Meet and report compliance with the early learning program guidelines for school readiness developed by the Department of Education.

⁹⁶ *A preschool-age child is one who is at least three years old but not yet eligible to start kindergarten.*

⁹⁷ *Continuing law permits school districts to administer the kindergarten diagnostic assessment, known as the kindergarten readiness assessment, to a child prior to the child's enrollment in kindergarten on the condition that the results not be used to prohibit the child from starting school (R.C. 3301.0715(A)(3)). It is possible, therefore, that a city, exempted village, or local school district may administer the kindergarten readiness assessment to a preschool-age child. However, it does not appear that the requirements regarding diagnostic assessments would ever apply to an early childhood education program provided by a joint vocational school district or ESC.*

In distributing funds to providers of early childhood education programs, the Department of Education must give priority in each fiscal year to previous recipients of state funds for such programs. Funding must be distributed on a per-pupil basis, which the Department may adjust as necessary so that the per-pupil amount, when multiplied by the number of eligible children receiving services on December 1 (or the first business day after that date), equals the total amount appropriated for early childhood education programs.⁹⁸ The Department may use up to 2% of the total appropriation for its administrative expenses.

The Department may examine a program provider's records to ensure accountability for fiscal and academic performance. If the Department finds that (1) the program's financial practices are not in accordance with standard accounting principles, (2) the provider's administrative costs exceed 15% of the total approved program costs, or (3) the program substantially fails to meet the early learning program guidelines for school readiness or exhibits below-average performance compared to the guidelines, the provider must implement a corrective action plan approved by the Department. This plan must be signed by the chief executive officer and the executive of the governing body of the provider. The plan must include a schedule for monitoring by the Department. Monitoring may involve monthly reports, inspections, a timeline for correction of deficiencies, or technical assistance provided by the Department or another source. If an early childhood education program does not improve, the Department may withdraw all or part of the funding for the program.

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 competitive bidding process. Unspent funds may be allocated to program providers for program expansion or improvement or for special projects to promote quality and innovation.

The act requires the Department of Education to compile an annual report regarding GRF-funded early childhood education programs and the Department's early learning program guidelines for school readiness. Copies of the report must

⁹⁸ *The Department also may increase the per-pupil amount by a "reasonable" percentage.*

be given to the Governor, the Speaker of the House, and the President of the Senate. The report also must be posted on the Department's website.

Montessori programs

(R.C. 3301.56)

The act establishes an exception to the law prohibiting a preschool program from grouping preschoolers with kindergartners. It permits any accredited, licensed preschool program that uses the Montessori method endorsed by the American Montessori Society or the Association Montessori Internationale as its primary method of instruction to combine preschool children three to five years old with children enrolled in kindergarten. When such age groups are combined, the maximum number of children per preschool staff member is 12 and the maximum group size is 24 children.

Reading improvement grants

Background

Sub. H.B. 1 of the 123rd General Assembly established the OhioReads initiative to provide classroom and community reading grants to improve students' reading skills. These grants were awarded by the OhioReads Council. An OhioReads Office within the Department of Education was created to be the fiscal agent for the grant program.

The enacting legislation also included a sunset provision abolishing the OhioReads Council effective July 1, 2004. By January 1, 2004, the Director of Budget and Management was required to recommend a governmental entity to assume the functions of the Council if the General Assembly did not continue the Council's existence. The General Assembly allowed the Council to expire on July 1, 2004. However, it did not designate a successor.

Elimination of OhioReads Office and community grant program

(repealed R.C. 3301.85 and 3301.87; R.C. 109.57, 3301.86, and 3301.88)

The act repeals the statute authorizing the OhioReads community reading grants program. This change acknowledges that the OhioReads Council ceased to exist on July 1, 2004, and grants are no longer being awarded under the program. Similarly, the act eliminates the OhioReads Office within the Department of Education because its fiscal responsibilities are obsolete.

Reading improvement grants

(R.C. 109.57, 3301.86, and 3301.88)

The act changes the name of the "OhioReads Classroom Reading Grants Program" to the "Classroom Reading Improvement Grants Program" and requires the Department of Education to administer the renamed program. Under the program, the Department must award reading intervention grants to public schools and classrooms operated by school districts, community schools, and educational service centers (ESCs). Grants must be used (1) to engage volunteers to assist students struggling with reading, (2) to improve reading outcomes in low-performing schools, and (3) to close the achievement gap between students of different subgroups such as race and socioeconomic status.

Post-Secondary Enrollment Options Program

Background

The Post-Secondary Enrollment Options Program (PSEO) allows high school students to enroll in nonsectarian college courses on a full- or part-time basis and to receive high school and college credit. Students in public high schools (school districts and community schools) and nonpublic high schools (chartered and nonchartered) are eligible to participate in the program.

PSEO consists of two "options," which the student elects at the time of enrolling in the course. Under Option A, the student is responsible for payment of all tuition and other costs charged by the college. Under Option B, the student receives both college credit and high school credit for successfully completing the course, and the state makes a payment to the institution of higher education on the student's behalf. State payments to institutions of higher education for students enrolled in public high schools are deducted from the state aid accounts of the students' school districts or community schools. State payments for students enrolled in nonpublic high schools are paid out of a separate state set-aside, since those schools do not receive operations funding from the state.

Ohio residency

(R.C. 3365.02; Section 206.09.99(B))

The act specifies that a student must be a resident of Ohio to participate in PSEO. Most students participating in the program would be Ohio residents if they are entitled to attend school in an Ohio school district. Nevertheless, it is possible that a student enrolled in a *nonpublic* school in the state may not be a resident but under prior law might have been eligible to participate in PSEO. The act eliminates this possibility beginning July 1, 2005.

Purpose statement

(R.C. 3365.02; Section 206.09.99(C))

The Governor vetoed a statement that the purpose of PSEO is "to provide enriched education opportunities to secondary grade students that are equivalent to or beyond the opportunities offered by the high school in which they are enrolled."

Reimbursement requirement

(R.C. 3365.02(G) and 3365.11; Section 206.09.99(D))

Beginning July 1, 2005, the act requires the student or the student's parent to reimburse state funds paid to a college for a course in which the student does not attain a passing final grade in the course. The Superintendent of Public Instruction must initiate proceedings to seek the reimbursement and may request the Attorney General to bring a civil cause of action in a common pleas court. Funds collected must be returned to the school district or community school from which they were deducted. If the student was enrolled in a nonpublic school, the funds must be credited to the General Revenue Fund.

High school credit for Option A

(R.C. 3365.04, 3365.041, 3365.05, and 3365.08; Section 206.09.99(E))

Beginning in the 2005-2006 school year, the act permits a student who elects Option A (under which the student or the student's parent pays the cost of the college course) also to elect to receive high school, as well as college, credit for successfully completing the course. If the student elects high school credit, the high school must award credit on the same basis that it awards credit for college courses paid by the state under Option B. The student retains the option to receive only college credit for courses under Option A.

Reduction of the number of school district employees for financial reasons

Application to future collective bargaining agreements

(R.C. 3319.17(D) and 3319.172; Section 563.03)

The act revises and expands the statutory authority of school districts to make reductions in force among their teachers and nonteaching employees. However, it also expressly states that the changes made by the act do not affect existing collective bargaining agreements. Nevertheless, the act also specifies that its provisions prevail over conflicting stipulations in agreements entered into after September 29, 2005 (the provisions' effective date).

Teachers

(R.C. 3319.17)

Continuing law allows a board of education or educational service center (ESC) governing board to make a reasonable reduction in teaching employees when, for any of certain statutorily specified reasons, the board decides that it will be necessary to reduce the number of teachers it employs. Among the reasons for which a board may reduce the number of teaching employees are: (1) return to duty of regular teachers after leaves of absence, (2) suspension of schools, and (3) territorial changes affecting the district or center.

The act adds that the board also may make a reasonable reduction of teaching employees for financial reasons. The act does not define "financial reasons."

Suspension of teachers' contracts

(R.C. 3319.17(C))

In making any reduction for any of the authorized reasons, continuing law requires a school district board or an ESC governing board to proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who must, within each teaching field or service area affected, give preference to teachers on continuing contracts (i.e., tenure) and to teachers who have greater seniority. The act specifies that preference be given *first* to teachers on continuing contracts and *then* to teachers who have greater seniority. Also, the act allows a board, on a case-by-case basis, instead of suspending a contract in whole, to suspend a contract in part, so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive.

Restoration of teachers

(R.C. 3319.17(C))

Under continuing law, teachers whose continuing contracts are suspended by any board pursuant to the reduction process have the right of restoration to continuing service status by that board in the order of seniority of service in the district or service center, if and when teaching positions become vacant or are created for which any of such teachers are or become qualified. The act adds that no teacher whose continuing contract has been suspended can lose that right of restoration to continuing service status by reason of having declined recall to a position that is less than full-time or, if the teacher was not employed full-time just

prior to suspension of the teacher's continuing contract, to a position requiring a lesser percentage of full-time employment than the position the teacher last held while employed in the district or service center.

Reduction of the number of nonteaching employees

(R.C. 3319.081 and 3319.172)

Continuing law establishes an employment contract system that controls nonteaching employees who are employed in school districts wherein the Ohio Civil Service Law does not apply (local and exempted village districts and ESCs and whose contracts of employment are not otherwise provided by law.⁹⁹ Contracts provided through this system may be terminated by a majority vote of the board of education. Except as provided below, continuing law specifies that these contracts may be terminated only for violation of written rules and regulations as set forth by the board of education or incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance. Continuing law also specifies that sexual battery against a student is grounds for termination.

The act adds a method by which, and expands the reasons for which, these contracts may be terminated. It specifies that the board of education of each school district where the Civil Service Law does not apply, and each ESC governing board, may adopt a resolution ordering reasonable reductions in the number of nonteaching employees for any of the reasons described above for making reductions in teaching employees. Therefore, in addition to the reasons for reduction discussed under "**Teachers**," above, a board may make a reduction for any of the following reasons:

(1) In the case of any city, exempted village, local, or joint vocational school district, decreased enrollment of pupils in the district;

(2) In the case of any governing board of an ESC providing any particular service directly to pupils pursuant to one or more interdistrict contracts, reduction in the total number of pupils the governing board is required to provide with the service under all interdistrict contracts as a result of the termination or nonrenewal of one or more of these interdistrict contracts;

⁹⁹ *Nonteaching employees of city school districts are generally subject to the Civil Service Law, unless the district opts out through collective bargaining or if a home rule municipality excludes school district employees from the Civil Service Law (see Ohio Assoc. of Public School Employees v. City of Twinsburg (1988), 36 Ohio St.3d 180).*

(3) In the case of any ESC governing board providing any particular service that it does not provide directly to pupils pursuant to one or more interdistrict contracts, reduction in the total level of the service the governing board is required to provide under all interdistrict contracts as a result of the termination or nonrenewal of one or more of these interdistrict contracts.

Suspension of contracts for nonteaching employees

(R.C. 3319.172)

In making any reduction in nonteaching employees by adopting a resolution, the district board or ESC governing board must proceed to suspend contracts in accordance with the recommendation of the superintendent of the district or ESC who must, within each pay classification affected, give preference first to employees under continuing contracts and then to employees on the basis of seniority. On a case-by-case basis, in lieu of suspending a contract in whole, a board may suspend a contract in part, so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive under the contract.

Restoration of nonteaching employees

(R.C. 3319.172)

The act specifies that similar to teachers, any nonteaching employee whose continuing contract is suspended has the right of restoration to continuing service status by the district or ESC board in order of seniority of service, if and when a nonteaching position for which the employee is qualified becomes vacant or is created. The act specifies that no nonteaching employee whose continuing contract has been suspended can lose that right of restoration to continuing service status by reason of having declined recall to a position requiring fewer regularly scheduled hours of work than required by the position the employee last held.

Termination of school district transportation staff

(R.C. 3319.081(C) and 3319.0810)

The act authorizes the termination of transportation staff positions for "reasons of economy and efficiency" by the boards of non-Civil Service school districts (local and exempted village school districts and some city school districts). In that case, rather than employ its own staff to transport students, the board must contract with an independent agent to provide transportation services. This provision does not appear to permit the lay off of any board-employed transportation personnel for economic reasons unless the district intends to

contract for at least some nonpublic personnel. However, another provision permits reductions in force among teachers and nonteaching employees for "financial reasons" (see **Reduction of the number of nonteaching employees,**" above).

Nevertheless, this provision prescribes conditions for laying off transportation employees and contracting with an independent agent for transportation services. First, any collective bargaining agreement between the board and the labor organization representing the terminated employees must have expired, must expire within 60 days after the termination notice, or must contain provisions permitting the termination of positions while the agreement is in force.

Second, the board must permit any employee whose position is terminated to fill any vacancy within the district's organization for which the employee is qualified. In so doing, the board must follow procedures for filling the vacancies established in the collective bargaining agreement with the labor organization representing the terminated employees, if it is still in force and contains such provisions. If the agreement is not in force or does not contain provisions for reemployment of the terminated employees in new positions, the board must offer reemployment on the basis of seniority.

Third, the board must permit any terminated employee to fill the employee's former position in the event the board reinstates that position within one year after the position is terminated. The act specifically states that the board need not reinstate an employee under this condition if the collective bargaining agreement with the labor organization representing the terminated employees, if one is in force at the time of the terminations, provides otherwise.

Fourth, the board must permit a terminated employee to appeal, pursuant to the Administrative Procedure Act (R.C. Chapter 119.), the board's decision to terminate the employee, not to reemploy the employee, or not to reinstate the employee.

Fifth, the contract between the board and an independent agent for the provision of transportation services must contain a stipulation requiring the agent to consider hiring the terminated district employees for similar positions.

Sixth, the contract between the board and the independent agent also must require the agent to recognize for purposes of collective bargaining between the former district employees and the agent any labor organization that represented those employees at the time of the terminations, as long as the following additional conditions are satisfied:

(1) A majority of the employees in the former school district bargaining unit agree to representation by that labor organization;

(2) Federal law does not prohibit the representation; and

(3) The labor organization is not prohibited from representing nonpublic employees either under other provisions of law or its own governing instruments.

No employee may be compelled to be included in the bargaining unit represented by that labor organization if there is another one within the agent's organization that is applicable to the employee.

Recourse if school district board does not comply with conditions

(R.C. 3319.0810(B))

If the school district board fails to comply with any of the prescribed lay-off conditions, including enforcement of the required contractual obligations, the terminations of transportation staff positions are void. In such instances, the board must reinstate the positions and fill them with the employees who filled those positions just prior to the terminations. The employees must be compensated at their rate of compensation in those positions just prior to the terminations plus any increases paid to other nonteaching employees since the terminations. In addition, the employees must receive back pay from the date of the terminations to the date of reinstatement, minus any pay the employees received while the board was in compliance with the act's provisions. The act grants any employee aggrieved by the board's failure to comply with any of the act's provisions the specific right to sue the board for reinstatement of the employee's former position or for damages in lieu of reinstatement.¹⁰⁰

Academic distress commissions

(R.C. 3302.10)

The Department of Education annually assigns one of five ratings to each school district (and schools within each district): excellent, effective, needs continuous improvement, academic watch, or academic emergency. The rating is based on the number of performance standards the district meets, whether the district has a certain performance index score established by the Department, and

¹⁰⁰ *Suit may be brought in the court of common pleas for the county in which the school district is located or, if the school district is located in more than one county, in the court of common pleas for the county in which the majority of the territory of the school district is located.*

whether the district has made adequate yearly progress (AYP) toward meeting certain performance goals in reading and mathematics. A school district is declared to be in a state of academic emergency if it does not make AYP, does not meet at least 31% of the state performance standards, and has a performance index score established by the Department that signifies a state of academic emergency.

Under the act, beginning July 1, 2007, the Superintendent of Public Instruction must establish an academic distress commission for each school district that is in a state of academic emergency and that has failed to make AYP for four or more consecutive years. The commission remains in existence until the district's performance rating is upgraded to "continuous improvement" for two out of three school years, unless the Superintendent sooner determines that the district can perform adequately without the commission.

Each commission must consist of three voting members appointed by the Superintendent of Public Instruction and two voting members appointed by the president of the district board of education. The act directs each commission to "assist the district for which it was established in improving the district's academic performance." It explicitly grants each commission the following powers:

(1) Appoint, reassign, and terminate the contracts of district administrative personnel;¹⁰¹

(2) Contract with a private entity to perform school or district management functions; and

(3) Establish a budget for the district and approve school district expenditures, unless a financial planning and supervision commission has been established under the school district fiscal emergency law.

Each commission must seek input from the district board of education regarding ways to improve the district's academic performance, but the act states that any decision by a commission, with respect to any authority the act grants it, is final.

¹⁰¹ *The act specifically exempts the commissions from restrictions of the teacher contract law (R.C. 3319.16, not in the act) specifying limited acceptable reasons for terminating contracts and requirements for notice, hearing, and appeal of contract terminations.*

Academic distress commissions and collective bargaining

(R.C. 3302.10(D))

Generally, the state public employee collective bargaining law and collective bargaining agreements negotiated under that law prevail over most other state laws. Specifically, a public employer under a collective bargaining agreement must bargain with respect to the wages, hours, and terms and conditions of employment of its employees. Exceptions to this general provision (that is, matters which an employer is not required, and in some cases not permitted, to bargain) are listed in the collective bargaining statutes (R.C. 4117.08 and 4117.10). The act creates an additional exception by providing that, if a district board of education is renewing a collective bargaining agreement while it has an academic distress commission in place, it may not enter into any agreement that would render any decision of the academic distress commission unenforceable.

The act also provides that if the board of a school district for which an academic distress commission has been established has bargained away some of its management rights and responsibilities (which it was not required but was permitted to bargain), those rights and responsibilities are restored to the board until both the commission is dissolved and the board agrees, in a new collective bargaining agreement, to relinquish them. This applies to any collective bargaining agreement entered into after September 29, 2005 (the provision's effective date), regardless of whether a commission was established for the district at the time the board entered into that agreement. The management rights and responsibilities to which this provision applies are:

- (1) Determine matters of inherent managerial policy, which include, but are not limited to, areas of discretion or policy such as the functions and programs of the district, standards of services, its overall budget, utilization of technology, and organizational structure;
- (2) Direct, supervise, evaluate, or hire employees;
- (3) Maintain and improve the efficiency and effectiveness of district operations;
- (4) Determine the overall methods, process, means, or personnel by which district operations are to be conducted;
- (5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- (6) Determine the adequacy of the work force;



- (7) Determine the overall mission of the employer as a unit of government;
- (8) Effectively manage the work force;
- (9) Take actions to carry out the mission of the district as a governmental unit.¹⁰²

Legislative approval of new school districts

(R.C. 3311.11)

The act provides that if the State Board of Education adopts a resolution proposing a new city or local school district to begin operations after the 2004-2005 school year, the school district may not be created unless both houses of the General Assembly approve its creation by concurrent resolution.

School district internal auditors

(R.C. 3319.06)

The act authorizes, but does not require, any city, exempted village, or local school district board of education to create a position called "internal auditor," which is directly responsible to the district board (and, presumably, not to the district superintendent).¹⁰³ If a school district does create the position, it must be staffed by a certified public accountant or registered public accountant who signs a contract with the board specifying the following:

- (1) The duties of the internal auditor;
- (2) The salary and other compensation to be paid, which may be increased, but may not be reduced during the term of the contract unless the district imposes an across-the-board reduction for district employees;
- (3) The number of days to be worked and any holidays or paid leave; and

¹⁰² R.C. 4117.08(C).

¹⁰³ *The act does not define this term and states only that the duties of an "internal auditor" include anything specified in the contract between the district and the individual. Presumably, school districts may already have been employing persons who would do the same duties that they might specify in a contract for an "internal auditor." If this is the case, it apparently would be up to the district whether or not to officially create an "internal auditor" position or whether to continue to have the same people perform these duties, whether or not they have contracts, are evaluated, or have permits to practice as CPAs or public accountants.*

(4) The term of the contract.

The initial contract with an internal auditor may not exceed three years and any renewals must be for between two and five years. In determining whether a contract will be renewed, the board must "consider" the results of an evaluation, which must be conducted in accordance with procedures specified by the board.

If the district board does not intend to renew a contract, it must provide written notice to the internal auditor not later than March 31 of the year of the contract's expiration. If the board fails to give this notice, the internal auditor is "deemed reemployed" for one year at the same salary plus any increments authorized by the board. A contract may be terminated only for "gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause." Any contract termination must be done in accordance with the notice and hearing requirements of teacher contract law.

Eye exams for disabled students

(R.C. 3323.19)

The act codifies and makes permanent an uncodified provision of prior law that requires students receiving special education services from a school district to undergo, at private expense, an eye examination. This provision was enacted in Am. Sub. H.B. 95 of the 125th General Assembly, the 2003-2005 state operating budget act, to apply in the 2004-2005 and 2005-2006 school years.

Under this provision, school districts must require each student who is identified for the first time as having a disability to undergo a comprehensive eye exam within three months after beginning any special education services under the individualized education program (IEP) prepared for the student. This requirement does not apply to students who began receiving special education services before July 1, 2004. Moreover, newly identified special education students who underwent a comprehensive eye exam in the nine months prior to identification need not have another exam. All eye exams must be performed by a licensed optometrist or by a licensed physician who is "comprehensively trained and educated in the treatment of the human eye, eye disease, or comprehensive vision services" (presumably, an ophthalmologist).

The law, unchanged by the act, specifies that neither the state nor the school district is responsible for covering the cost of an eye exam, unless a student is entitled to an exam as part of the identification process or provision of subsequent services. Presumably, a student's parent must pay for the exam or otherwise arrange for it if the student is not so entitled. School district superintendents, in

determining whether a student has met the eye exam requirement, may take into account any special circumstances of the student or the student's family that could prevent the student from having the exam before starting special education services. Districts, however, cannot withhold special education services from a student who does not undergo an eye exam as required.

Collective bargaining agreements and use of school volunteers

(R.C. 4117.103)

The act states that no collective bargaining agreements entered into after September 29, 2005 (the provision's effective date) may prohibit a school district from "utilizing volunteers" to assist the district and its schools in performing school functions, except in the cases where the function must be performed by an employee who holds a license, permit, or certificate issued by the State Board of Education or, in the case of bus drivers, a certificate issued by the school district, an educational service center, a nonpublic school, or contractor.

School district sale of real property

(Section 206.10.21)

Under continuing law, school districts may only dispose of real property exceeding \$10,000 in value by first offering it at public auction. If the property is not sold after being offered, the property may be sold by private sale. However, the statute provides for several other alternatives. The district may sell the property directly to one of a number of government entities, may trade it for an item of personal property, or may trade for a different parcel of real property "needed for school purposes." An exception to the general law on disposal of school property requires school districts, before exercising any of the above options, to first offer any property "suitable for classroom space" to community schools located in the district. The property must be offered at its appraised fair market value.¹⁰⁴

The act provides another, temporary, exception to the statute governing sale of school district property. Until December 31, 2005, a school district may "support economic development within its territory" by using direct sale to dispose of *certain* property, in lieu of any of the existing alternatives, including the requirement to offer property to community schools. The property exempted from current law by the act's provision must meet all of the following conditions:

¹⁰⁴ R.C. 3313.41, not in the act.

(1) The property must be encumbered by easements, liens, or other restrictions that benefit the purchaser;

(2) The property must be adjacent to real property previously disposed of by the district; and

(3) The property will be used for commercial development.

Prohibition on lowered school district and building performance ratings

(R.C. 3302.03(B))

The act specifies that when designating performance ratings for school districts and buildings, the Department of Education must not assign a district or building a lower designation from its previous year's designation based solely on one student subgroup's not making adequate yearly progress (AYP). This prohibition will first apply to the performance ratings issued in August 2005, which are based on data from the 2004-2005 school year.

Background

Under continuing law, the Department annually must publish how a school district or public school building performed on the three components included in determining the academic performance rating assigned to the district or building. The Department must indicate the extent to which a district or building meets each of the performance indicators and the number of applicable performance indicators that have been achieved. Also, the Department must include the performance index score of the district or building and whether it made AYP. The Department publishes school district and building ratings in August in time to meet the requirements of the federal No Child Left Behind Act of 2001.

The following table shows how the performance ratings are determined.

Rating	Percentage of performance indicators met		Performance index score		Makes AYP
Excellent	94%-100%	<i>or</i>	*	<i>and</i>	Yes
	94%-100%	<i>or</i>	*	<i>and</i>	No
Effective	75%-93%	<i>or</i>	*	<i>and</i>	Yes
	75%-100%	<i>or</i>	*	<i>and</i>	No
Continuous improvement	0%-74%	<i>and</i>	*	<i>and</i>	Yes
	50%-74%	<i>or</i>	*	<i>and</i>	No
Academic watch	31%-49%	<i>or</i>	*	<i>and</i>	No
Academic emergency	0%-30%	<i>and</i>	*	<i>and</i>	No

* The Department is required to set the values for the performance index score.

Ohio Center for Autism and Low Incidence

(R.C. 3323.30, 3323.31, 3323.32, and 3323.33)

The act formally establishes the Ohio Center for Autism and Low Incidence (OCALI) to administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and other low incidence disabilities involving hearing, vision, orthopedics, traumatic brain injuries, and general health. (OCALI has been operating within the Department of Education as an information clearinghouse under a federally funded initiative.) The act places OCALI within the Department's Office for Exceptional Children. It requires the Superintendent of Public Instruction, in consultation with an advisory board, to appoint the OCALI executive director.

The Superintendent must establish and organize an advisory board to assist and advise the Department in the operation of OCALI. As determined by the Superintendent, the advisory board consists of individuals who are stakeholders in the service to persons with autism and low incidence disabilities, including the following:

- (1) Persons with autism and low incidence disabilities;
- (2) Parents and family members;
- (3) Educators and other professionals;
- (4) Higher education instructors; and

(5) Representatives of state agencies.

In its administration and coordination of programs, OCALI is charged with the following goals:

(1) Collaborate and consult with state agencies that serve persons with autism and low incidence disabilities;

(2) Collaborate and consult with institutions of higher education in development and implementation of courses for educators and other professionals serving persons with autism and low incidence disabilities;

(3) Collaborate with parent and professional organizations;

(4) Create and implement programs for professional development, technical assistance, intervention services, and research in the treatment of persons with autism and low incidence disabilities;

(5) Create a regional network for communication and dissemination of information among educators and professionals serving persons with autism and low incidence disabilities; and

(6) Develop a statewide clearinghouse for information about autism spectrum disorders and low incidence disabilities.

In developing the statewide clearinghouse, OCALI must also (a) maintain a collection of resources for public distribution, (b) monitor information on resources, trends, policies, services, and current educational interventions, and (c) respond to requests for information from parents and educators of children with autism and low incidence disabilities.

Stipend for National Board certified teachers

(R.C. 3319.55)

Under continuing law, public and chartered nonpublic school teachers who hold valid teaching certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. The National Board is an independent organization that awards certificates to teachers whose instructional practices, as demonstrated by evaluations of content knowledge and classroom performance, meet rigorous standards of teaching quality. The certificates are valid for ten years, but can be renewed for an additional ten-year period.

The act limits a teacher's eligibility for an annual state stipend to the ten-year period of the initial certification. That is, teachers who renew their National Board certification for another ten-year period are not eligible for the state stipends.

Model student acceleration policy

(R.C. 3324.10)

The act requires the State Board of Education to adopt a model student acceleration policy, addressing at least the options of whole grade acceleration, subject area acceleration, and early high school graduation. The policy must be adopted by June 30, 2006, and must address any recommendations made in a 2005 Department of Education study conducted under the Gifted Research and Demonstration Grant Program.

The act also adds a requirement that each school district either adopt the Department's policy or adopt one of its own for implementation beginning in the 2006-2007 school year. If a district adopts its own policy, it must cover similar issues as the State Board's.

School district latchkey programs

(R.C. 3313.207, 3313.208, and 3313.209)

Under prior law, a city, local, or exempted village school district operating a latchkey program was prohibited from expending money from the district's general fund to provide the program, unless the money was from an appropriation of the General Assembly that specifically permitted the expenditure. A district that did not operate a latchkey program instead could furnish ancillary services, employees, or payments to any person or entity that operates a latchkey program, but was expressly prohibited from using money from the general fund of the district to pay for these services, except under certain circumstances.

The act extends the authority to provide latchkey programs to joint vocational school districts and educational service center. It also removes the restriction against using money from a school district's or service center's general fund to provide for the program or for ancillary services.

Elimination of school districts' annual spending plan and submission of certificate of estimated resources

(R.C. 3313.489 and 5705.391; Repealed R.C. 3311.40)

The act eliminates the mandate that each board of education must adopt, as part of its annual appropriation measure, a spending plan setting forth a schedule of expenses and expenditures of all appropriated funds as well as all revenues available for appropriation by the school district for the fiscal year. Under that mandate, a copy of the appropriation measure and spending plan had to be submitted to the Superintendent of Public Instruction, who was required to use it to determine whether the district would incur any expenses during that year that would impair its financial ability to operate its schools with the revenues available to it. The act requires, instead, that the Superintendent make the determination based upon the districts' five-year projections of revenues and expenditures, which is required by separate law.

The act also eliminates the requirement that school districts file their amended certificates of estimated resources, produced by the county budget commission and filed with the school district pursuant to R.C. 5705.35, and their annual appropriations measure with the Department of Education.

Elimination of requirement to file statistical reports

(R.C. 3317.09)

The act eliminates (1) the requirement that the Department of Education must file a monthly report, regarding distribution of money to a school district by the state, with the Senate, the House of Representatives, the Legislative Service Commission, and the Governor, and (2) the requirement that the Department must file its annual statistical report, detailing receipts of revenues and expenditures for all school districts, with those officials as well as with the Auditor of State.

Transportation of pupils attending vocational education programs

(R.C. 3327.01)

The act codifies a provision requiring the boards of education of all city, local, and exempted village school districts that transport pupils according to a career-technical plan approved by the State Board of Education. Specifically, it requires them to transport high school pupils who attend career-technical classes at another district, including a joint vocational school district, from the public high school operated by the district to which the student is assigned to the career-technical program.

Updated five-year projections for fiscal watch and fiscal emergency school districts

(R.C. 3316.043)

The act requires that upon the approval by the Superintendent of Public Instruction of a financial plan (required for fiscal watch districts) or a financial recovery plan (required for fiscal emergency districts), the board of education of a school district that is in fiscal watch status, or the financial planning and supervision commission for a district in fiscal emergency status, must revise the district's five-year projection of revenues and expenditures so that the projection is consistent with the financial plan or financial recovery plan.

Suspension of set-asides for school districts in certain circumstances

(R.C. 3315.17, 3315.18, 3316.06, and 3316.16)

Background

Continuing law requires the board of education of each city, exempted village, local, and joint vocational school district to establish a "Textbook and Instructional Materials Fund" and a "Capital and Maintenance Fund" and deposit into each of those funds an amount equal to 3% (or another percentage if established by the Auditor of State) of the base-cost formula amount for the preceding fiscal year, multiplied by the district's student population for the preceding fiscal year. Money in the Textbook and Instructional Materials Fund must be used solely for textbooks, instructional software, and instructional materials, supplies, and equipment, while money in the Capital and Maintenance Fund must be used solely for acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. Any money not used in either fund in any fiscal year carries over to the next fiscal year.

School districts in fiscal emergency

The act exempts a school district from making otherwise required deposits into the funds while the district is in a fiscal emergency period and excuses the district from eliminating any deficits in the funds that accrued in prior years. Before the district's financial planning and supervision commission is terminated, however, the district's five-year financial forecast must project that the district will comply with the requirement to make those deposits the year after the commission is proposed to be terminated.

School districts in fiscal watch or fiscal caution

The act permits a school district in fiscal watch or fiscal caution to apply to the Superintendent of Public Instruction for an annual waiver from the requirements to deposit money into the set-aside funds. Under the waiver, the district may be permitted to deposit less than the required amounts or permitted to make no deposits at all into the funds. The Superintendent may grant a waiver only if the district demonstrates to the Superintendent's satisfaction that the deposits will create an undue financial hardship on the district.

Other school districts

The act permits any district not in fiscal emergency, fiscal watch, or fiscal caution to apply for a waiver from the set-aside requirements, but only once every three consecutive fiscal years. The waiver that may be granted to a district not in fiscal emergency, watch, or caution is the same type that may be granted to a fiscal watch or caution district, as described above. The Superintendent may grant a waiver to such a district only if the district demonstrates to the Superintendent's satisfaction that (1) the deposits will necessitate reduction or elimination of a program critical to the academic success of students and (2) no other reasonable alternatives exist.

Prohibition against school district operation without a charter

(R.C. 3301.16)

Under continuing law, the State Board of Education has the power to classify and charter school districts and individual schools within each district. The Board also has the power to revoke the charter of any school district or school that fails to meet the Board's standards for elementary and high schools. The act explicitly prohibits any school district or individual school operated by a school district from operating without a charter issued by the Board.

Map required in chartering new school districts

(R.C. 3301.16)

The act requires the State Board of Education to require any party proposing the creation of a new school district to submit to the Board a map, certified by the county auditor of the county in which the proposed new district is located, that shows the boundaries of the proposed new district. If the proposed new district is located in more than one county, the map must be certified by the county auditor of each county.

Legislative committee to study school district consolidation

(Section 206.10.05)

The act establishes a legislative committee, composed of six members including two majority party members and one minority party member from each house, appointed by the Speaker of the House and the Senate President, respectively. The committee must study the feasibility and economic impact (including possible cost savings) of city, local, and exempted village school district consolidation. If the committee determines that school district consolidation is feasible, the committee must recommend legislation to accomplish the consolidation. The committee must report its findings to the General Assembly not later than June 30, 2006 (one year after the act's effective date). Following its report of findings, the committee is dissolved.

School Physical Fitness and Wellness Advisory Council

(Section 206.10.12)

The act establishes the School Physical Fitness and Wellness Advisory Council to develop best practices regarding nutrition education, physical activity for students, and school-based activities and school-business partnerships that promote student wellness. The Council must provide information no later than December 31, 2005, to school districts participating in the federal school lunch program to facilitate adoption of local wellness policies, and must develop strategies for evaluating the implementation of the policies.

The 12 members of the School Physical Fitness and Wellness Advisory Council include one representative of each of the following:

- (1) Ohio Association for Health, Physical Education, Recreation and Dance;
- (2) Ohio School Food Service Association;
- (3) Ohio School Boards Association;
- (4) Ohio Dietetic Association;
- (5) Ohio State Medical Association;
- (6) The food industry, appointed by the Ohio Chamber of Commerce;
- (7) Ohio Parent Teacher Association;
- (8) Ohio Soft Drink Association;

(9) Department of Education, appointed by the Superintendent of Public Instruction;

(10) Ohio Parks and Recreation Association;

(11) Ohio Children's Hunger Alliance; and

(12) The Director of Health.

The representative of the Department of Education serves as chairperson.

BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- Requires a person who desires to be licensed as a funeral director to "satisfactorily complete" instead of "serve," the type of apprenticeship applicable to that applicant.

Funeral director apprenticeships

(R.C. 4717.05)

Under continuing law, any person who desires to be licensed as a funeral director must apply to the Board of Embalmers and Funeral Directors and meet several requirements. One requirement that is modified by the act is that the applicant serve a one-year apprenticeship under a licensed funeral director and assist the funeral director in directing at least 25 funerals. The act requires that the applicant "satisfactorily complete" the apprenticeship instead of "serve" it.

Continuing law also requires the applicant to satisfactorily complete at least 12 months of mortuary science college training; however, the applicant may substitute a two-year apprenticeship under a licensed funeral director assisting the funeral director in at least 50 funerals. The act specifies that the applicant must "satisfactorily complete" the two-year apprenticeship if the applicant chooses to substitute it for mortuary science college training.

STATE EMPLOYMENT RELATIONS BOARD

- Allows the State Employment Relations Board (SERB) to seek, solicit, apply for, and accept grants, gifts, and contributions for specified uses.



- Renames the Training and Publications Fund used by SERB the "Training, Publications, *and Grants* Fund."
- Expands the funding sources for the Training, Publications, and Grants Fund and specifies additional uses for money held in the Fund.

SERB Training, Publications, and Grants Fund

(R.C. 4117.24)

Continuing law that is modified by the act requires the State Employment Relations Board (SERB) to deposit into the Training and Publications Fund all payments received by SERB for copies of documents, rulebooks, and other publications; fees received from seminar participants; and receipts from the sale of clearinghouse data. Continuing law also specifies the purposes for which these funds may be used.

The act renames the Fund the Training, Publications, *and Grants* Fund. It also allows SERB to seek, solicit, apply for, accept, receive and enter into contracts concerning grants, gifts, and contributions. The act requires that all of the money received through these sources be deposited into the Fund. Under the act, these funds must be held for, used for, and applied to only the purposes for which those grants are made and for which those contracts are entered.

In addition to the moneys received from the sources listed in ongoing law and the moneys received from grants, gifts, and contributions as described in the paragraph above, SERB also must deposit into the Fund moneys received from donations, awards, bequests, reimbursement for professional services and expenses related to those services, and from funds to support the development of labor relations services and programs. In addition to the purposes specified in continuing law, the act requires the Fund to be used to defray the costs associated with grant projects, innovative labor-management cooperation programs, related research projects, the advancement in professionalism of public sector relations, and for the professional development of board employees.

ENVIRONMENTAL PROTECTION AGENCY

- Requires the Director of Environmental Protection to continue to implement an enhanced motor vehicle inspection and maintenance program (referred to as E-Check) in counties in which an enhanced motor

vehicle inspection and maintenance program is federally mandated, prohibits its implementation in any other county, requires the program to expire on December 31, 2007, prohibits the continuation of the program beyond that date unless otherwise federally mandated, and requires the Director to adopt rules necessary to implement the program in the counties in which it is federally mandated.

- Establishes a new, additional fee on the disposal of solid wastes of \$1.50 per ton, the proceeds of which must be credited to the Environmental Protection Fund created by the act, and specifies that money in the Fund must be used by the Ohio Environmental Protection Agency (OEPA) to administer and enforce most of the programs under OEPA's jurisdiction and to fund other duties that state law requires OEPA to perform.
- Extends through June 30, 2008, the continuing fee on the disposal of solid wastes that is used to fund the solid and infectious waste and construction and demolition debris management programs, expands the allowable uses of the proceeds of the fee by authorizing OEPA to use the proceeds to provide compliance assistance to small businesses, and establishes a sunset date of June 30, 2008 for the continuing solid waste disposal fee the proceeds of which are credited to the Hazardous Waste Facility Management Fund and the Hazardous Waste Clean-up Fund.
- Specifies that state solid waste disposal fees are to be collected at transfer facilities as well as at disposal facilities as in retained law, excludes from the fees materials that are separated or removed for recycling, and amends the procedures for collecting and remitting the fees.
- Would have excluded certain shale and clay products and certain spent petroleum refinery catalysts from the definition of "solid wastes" (VETOED).
- Establishes an 18-month moratorium on the licensing of new construction and demolition debris facilities with specified exceptions.
- Creates the Construction and Demolition Debris Facility Study Committee to study specified topics related to construction and demolition debris facilities and make recommendations to the General Assembly for changes regarding the laws governing those facilities.

- Specifies that the fee levied on the disposal of construction and demolition debris at a solid waste facility under the Construction and Demolition Debris Law does not apply if there is no licensed construction and demolition debris facility within 35 miles of the solid waste facility as determined by a facility's property boundaries rather than within 40 miles as in prior law.
- Exempts from both the continuing disposal fee levied under the Construction and Demolition Debris Law and the new fees established by the act (see below) source separated materials exclusively composed of reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone when the materials are used as a fire prevention measure at a construction and demolition debris facility in accordance with the act or as fill material for construction at such a facility or to bring the facility up to grade in accordance with the act.
- Establishes a new 25¢ per ton or 12.5¢ per cubic yard fee on the disposal of construction and demolition debris, and requires the proceeds of the fee to be credited to the Soil and Water Conservation District Assistance Fund created by the act to provide matching funding for soil and water conservation district projects.
- Establishes a second new fee on the disposal of construction and demolition debris of 75¢ per ton or 37.5¢ per cubic yard, requires the proceeds to be credited to the continuing Recycling and Litter Prevention Fund administered by the Division of Recycling and Litter Prevention in the Department of Natural Resources, and eliminates the crediting of receipts from the corporate franchise tax on litter stream products to the Fund.
- Specifies that the two new construction and demolition debris disposal fees levied by the act do not apply to the disposal of construction and demolition debris at a licensed solid waste facility if the owner or operator of the facility chooses to collect fees on the disposal of the construction and demolition debris that are identical to the fees that are collected on the disposal of solid wastes at the facility.
- Authorizes money in the continuing Environmental Protection Remediation Fund to be used for certain environmental clean-up activities involving hazardous waste.

- Makes it optional, rather than required as in prior law, that hazardous waste clean-up agreements with landowners contain provisions for the reimbursement of the state for the costs of a cleanup and that unreimbursed portions of the cost of the cleanup be recorded at the office of the applicable county recorder.
- Clarifies that continuing contractual bidding requirements apply to hazardous waste clean-up activities conducted by OEPA regardless of whether property has been acquired by OEPA.
- Allows the Director to enter into contracts independent of the Department of Administrative Services for certain clean-up activities if there is a threat to public health or safety or the environment.
- Exempts from solid waste disposal and generation fees, upon an order of the Director, solid wastes generated as a result of certain clean-up activities involving public funds and conducted under contracts entered into by the United States Environmental Protection Agency, the OEPA, or the Department of Administrative Services on behalf of the OEPA.
- Specifies that money used by OEPA from the Hazardous Waste Clean-up Fund to pay the costs of clean-up activities and subsequently recovered in a civil action must be repaid to the Hazardous Waste Clean-up Fund instead of paid into the Immediate Removal Fund as in prior law.
- Extends the sunset of the fee on the sale of tires that is used to fund the Scrap Tire Management Program from June 30, 2006, to June 30, 2011.
- Reduces the amount of money that the Department of Taxation receives to pay the Department's costs in administering the fee on tires that is used to fund the Scrap Tire Management Program from 4% to 2% of the money collected from that fee.
- Alters the cost recovery procedure for removal actions taken by the Director under the Scrap Tire Management Program by requiring the Director to record the costs and establish a lien on the property that was the subject of a removal action after completing the removal action rather than after a civil action has been adjudicated as in former law.
- Revises the industrial classifications in the fee schedule based on process weight rates for permits to install under the Air Pollution Control Law.

- Extends all of the following for two years:
 - The sunset of the annual emissions fees for synthetic minor facilities;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;
 - The sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;
 - The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;
 - The establishment of a higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable, and eliminates a fee schedule for those purposes that has expired; and
 - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.
- Establishes requirements and procedures governing the distribution of federal moneys that are disbursed for purposes of compensating OEPA and the Department of Agriculture for administering the NPDES program.
- Establishes requirements specifying what must be submitted with a section 401 water quality certification application and procedures and

time frames for issuance or denial of a section 401 water quality certification.

- Generally subjects standards and procedures that are used to evaluate mitigation proposals to review under the Administrative Procedure Act in order to have the force of law.
- Would have established certain mitigation requirements for impacts to wetlands and streams (VETOED).
- Establishes an application fee of \$200 for a section 401 water quality certification, and requires the payment of review fees of \$500 per each acre of wetland to be impacted; \$5 per linear foot of each ephemeral stream to be impacted, \$10 per linear foot of each intermittent stream to be impacted, and \$15 per linear foot of each perennial stream to be impacted, or \$200, whichever is greater; and \$3 per cubic yard of dredged or fill material to be moved with respect to a lake.
- Caps the total fees for a section 401 water quality certification at \$5,000 for counties, townships, and municipal corporations and \$25,000 for all other applicants, requires proceeds from the fees to be credited to the continuing Surface Water Protection Fund, exempts state agencies and projects authorized by general or nationwide permits issued by the U.S. Army Corps of Engineers from the fees, and exempts coal mining and reclamation operations from the fees for one year after the act's effective date.
- Requires the issuance, denial, renewal, suspension, and revocation of certifications of certified professionals under the Voluntary Action Program Law to be published on OEPA's web site and in OEPA's weekly review rather than in newspapers of general circulation as under former law.
- Allows the Director to suspend or revoke the certification of certified professionals for specified violations in accordance with rules adopted under the Voluntary Action Program Law rather than in accordance with the Environmental Protection Agency Law as under former law.
- Creates the Clean Diesel School Bus Fund consisting of money from gifts, grants, and contributions for the purpose of adding pollution control equipment to diesel-powered school buses, requires the Director to use



money in the Fund to make grants to Ohio school districts for the purpose of adding pollution control equipment to diesel-powered buses and to pay OEPA's related administrative costs, requires the Director to give priority to school districts designated as nonattainment for the fine particulate national ambient air quality standard, and allows the Director to make grants to school districts to maintain pollution control equipment on school buses and to offset the additional costs of using ultra-low sulfur diesel fuel.

Motor vehicle inspection and maintenance program

(R.C. 3704.035, 3704.14, 3704.142 (repealed), 3704.143, 3704.17 (repealed), 3704.99, 4503.103, and 5552.01)

Under contracts that are authorized by statute and that are scheduled to expire on December 31, 2005, the Ohio Environmental Protection Agency (OEPA) oversees the implementation of an enhanced motor vehicle inspection and maintenance program in 14 counties in the state in the Cleveland-Akron, Cincinnati, and Dayton metropolitan areas. The program operates under the name E-Check and is designed to comply with the federal Clean Air Act Amendments. Motor vehicle inspections are conducted under the program by a contractor selected pursuant to requirements established in law enacted in 1993. There is a separate contract governing each metropolitan area in which the program is operating.

As indicated above, the current contracts for the program expire on December 31, 2005. Under law retained in part by the act, the Director of Environmental Protection cannot renew the contracts or enter into new contracts. In addition, upon the expiration or termination of the contracts, the Director must terminate the program and cannot implement a new program unless the program is authorized by the General Assembly. The act revises those prohibitions and requirements in order to provide for the continuation of the program in a portion of the state as discussed below.

In providing for the continuation of the program, the act eliminates many of the specific statutory requirements related to it, replacing those requirements with more general authority granted to OEPA. Under that authority, the Director must continue to implement an enhanced motor vehicle inspection and maintenance program in counties in which an enhanced program is federally mandated. The program must operate for a period of two years beginning on January 1, 2006, and ending on December 31, 2007, and is required to be substantially similar to the

enhanced program implemented in those counties under the contract that is scheduled to expire on December 31, 2005. The act prohibits the Director from implementing a motor vehicle inspection and maintenance program in any county other than a county in which the program is federally mandated. Further, the act specifically states that the enhanced program established under the act expires on December 31, 2007, and cannot be continued beyond that date unless otherwise federally mandated.

Under the act, the enhanced program, at a minimum, must do all of the following:

- (1) Comply with the federal Clean Air Act;
- (2) Provide for the extension of a contract for a period of two years beginning on January 1, 2006, and ending on December 31, 2007, with the contractor who conducted the enhanced motor vehicle inspection and maintenance program in those federally mandated counties pursuant to a contract that is scheduled to expire on December 31, 2005;
- (3) Provide for the issuance of inspection certificates; and
- (4) Provide for a new car exemption for motor vehicles four years old or newer and provide that a new motor vehicle is exempt for four years regardless of whether legal title to the motor vehicle is transferred during that period.

Under prior law, if the General Assembly authorized a new program, that program was required to include a new car exemption for motor vehicles five years old or newer. As indicated above, the act instead requires the program to include a new car exemption for motor vehicles four years old or newer.

The act requires the Director to adopt rules in accordance with the Administrative Procedure Act that the Director determines are necessary to implement the enhanced program. The Director may continue to implement and enforce rules pertaining to the enhanced motor vehicle inspection and maintenance program previously implemented, provided that the rules do not conflict with the requirements established in the act.

The act creates the Motor Vehicle Inspection and Maintenance Fund, consisting of money received by the Director from any fees for inspections that are established in rules adopted under the act. The Fund is a continuation of the Fund of the same name that existed under prior law. The Director must use money in the Fund solely for the implementation, supervision, administration, operation, and enforcement of the enhanced motor vehicle inspection and maintenance program.

Finally, the act makes several technical changes necessitated by the repeal of the statutes governing the program in existence on the act's effective date.

Solid waste disposal fees

Introduction

Continuing law levies two 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 OEPA. The second fee is another \$1 per-ton fee that is used to fund OEPA's solid and infectious waste and construction and demolition debris management programs. Solid waste disposal fees are collected by the owners and operators of solid waste facilities as trustees for the state.

New solid waste disposal fee

(R.C. 3734.57 and 3745.015)

The act establishes a new solid waste disposal fee of \$1.50 per ton. Money from this new fee is required to be deposited in the state treasury to the credit of the Environmental Protection Fund, which is created by the act. Money in the Fund is to be used by OEPA to pay its costs associated with administering and enforcing, or otherwise conducting activities under, the Environmental Protection Agency Law, the Air Pollution Control Law, the Solid, Hazardous, and Infectious Waste Law, the Voluntary Action Program Law, the Low-Level Radioactive Waste Law, the Radiation Control Program Law, the Emergency Response and Planning Law, the Hazardous Substances Law, the Cessation of Regulated Operations Law, the Risk Management Program Law, the Water Pollution Control Law, the Safe Drinking Water Law, the Conservancy Districts Law, the County Water Supply Systems Law, the Watershed Districts Law, the Private Sewer Systems Law, the Ohio River Sanitation Compact Law, the Sanitary Districts Law, the Sewer Districts and County Sewers Law, the Regional Water and Sewer Districts Law, the Real Property Tax Law, and the Water Resources Council Law. Collection of the fee is to begin on July 1, 2005, and terminates on June 30, 2008.

Revisions concerning continuing solid waste disposal fees

(R.C. 3734.57)

As discussed above, continuing law levies a \$1 per-ton fee on the disposal of solid wastes to fund OEPA's solid and infectious waste and construction and demolition debris management programs. Under prior law, the fee was scheduled

to sunset on June 30, 2006. The act continues the fee through June 30, 2008. Further, the act expands the purposes for which money generated from the fee may be used by allowing the money to be used to provide compliance assistance to small businesses.

The act also establishes a sunset date of June 30, 2008 for the \$1 per-ton solid waste disposal fee the proceeds of which are required to be credited to the Hazardous Waste Facility Management Fund and the Hazardous Waste Clean-up Fund. This fee previously had no sunset date.

Procedures for collecting and remitting state solid waste disposal fees

(R.C. 3734.57)

Under prior law, only the owners or operators of solid waste disposal facilities were required to collect state solid waste disposal fees as trustees for the state and to submit the fees and prepare and file with the Director of Environmental Protection monthly returns indicating the total tonnage of solid wastes received for disposal at the gates of the facilities and the total amount of fees collected in accordance with specified procedures. Not later than 30 days after the last day of the month to which such a return applied, an owner or operator had to mail to the Director the return for that month together with the fees collected during that month as indicated on the return. The act replaces the former mechanism for collecting and remitting the fees with a mechanism that, while retaining certain portions of the former mechanism, includes additional procedures and requirements.

First, the act generally requires the disposal fees to be collected by either a solid waste transfer facility or a solid waste disposal facility, whichever facility first receives the solid wastes. The fees are required to be collected by a transfer facility located in Ohio if the solid wastes are taken to the transfer facility prior to being transported to a solid waste disposal facility for disposal. The fees must be collected by a solid waste disposal facility if the solid wastes are not taken to a solid waste transfer facility located in Ohio prior to being transported to the disposal facility. The fees must be collected by the owner or operator of the solid waste transfer or disposal facility as a trustee for the state. However, the act specifies that the fees do not apply to materials separated from a mixed waste stream for recycling by a generator or materials removed from the solid waste stream through recycling, as "recycling" is defined in rules adopted by the Director.

The act applies the requirement that owners and operators of solid waste facilities submit a return to the owners and operators of both transfer and disposal facilities and retains the time frame, 30 days, within which the return must be

submitted, but it specifies that the return must be filed each month and that the return must indicate the total tonnage of solid wastes received at the facility during that month and the total amount of fees required to be collected during that month. In addition, the act specifies that the amount of fees required to be collected is equal to the total tonnage of solid wastes received at a transfer facility multiplied by the fees levied or, in the case of a solid waste disposal facility, the total tonnage of solid wastes received at the facility that were not previously taken to a transfer facility located in Ohio multiplied by the fees levied. The act also requires the owner or operator of a solid waste disposal facility to indicate on the return the total tonnage of solid wastes received from transfer facilities located in this state during that month for which the fees were required to be collected by the transfer facilities. The monthly returns must be filed on a form prescribed by the Director.

The act also establishes a discount for the timely submission of a return and fees. Specifically, the act provides that if the return is filed and the amount of fees due is paid in a timely manner as discussed above, the owner or operator may retain a discount of $\frac{3}{4}$ of 1% of the total amount of the fees that are required to be paid as indicated on the return.

Law partially changed by the act authorizes the owner or operator of a solid waste facility to request an extension of not more than 30 days for filing the return and remitting the fees. Formerly, if the fees were not remitted within 30 days after the last day of the month during which they were collected or were not remitted by the last day of an extension approved by the Director, the owner or operator was required to pay an additional 50% of the amount of the fees for each month that they were late. The act clarifies that fees must be remitted within 30 days after the last day of the month to which the return applies, or by the last day of an extension, and provides that late submission of the return and the fees results in a loss of the $\frac{3}{4}$ of 1% timely payment discount (see above) and a charge of 10%, rather than 50%, of the amount of the fees for each month the fees are late. For purposes of calculating the late fee, the first month in which fees are late begins on the first day after the deadline has passed for timely submitting the return and fees, and one additional month is counted every 30 days thereafter.

The act authorizes the owner or operator of a solid waste facility to request a refund or credit of state solid waste disposal fees remitted to the Director that have not been paid to the owner or operator. Such a request can be made only if the fees have not been collected by the owner or operator, have become a debt that has become worthless or uncollectable for a period of six months or more, and may be claimed as a deduction, including a deduction claimed if the owner or operator keeps accounts on an accrual basis, under the federal Internal Revenue Code and regulations adopted under it. Prior to making a request for a refund or credit, an owner or operator must make reasonable efforts to collect the applicable

fees. A request for a refund or credit cannot include any costs resulting from those efforts to collect unpaid fees.

A request for a refund or credit of fees must be made in writing, on a form prescribed by the Director, and must be supported by evidence that may be required in rules adopted by the Director. After reviewing the request, the Director may grant a refund to the owner or operator or may permit a credit to be taken by the owner or operator on a subsequent monthly return submitted by the owner or operator. The amount of a refund or credit cannot exceed an amount that is equal to 90 days' worth of fees owed to an owner or operator by a particular debtor of the owner or operator. A refund or credit cannot be granted by the Director to an owner or operator more than once in any 12-month period for fees owed to the owner or operator by a particular debtor. If, after receiving a refund or credit from the Director, an owner or operator receives payment of all or part of the fees, the owner or operator must remit the fees with the next monthly return submitted to the Director together with a written explanation of the reason for the submittal.

Continuing law provides that solid waste disposal fees are in addition to all other applicable fees and taxes. Under former law, they were to be added to any other fee or amount specified in a contract that was charged by the owner or operator of a solid waste disposal facility or to any other fee or amount that was specified in a contract that was charged by a transporter of solid wastes. The act instead states that the fees must be paid by the customer to the owner or operator of a solid waste transfer or disposal facility notwithstanding the existence of any provision in a contract that the customer may have with the owner or operator that would not require or allow such payment.

Technical changes

(R.C. 3734.57)

The act makes technical changes to the law related to state solid waste disposal fees and solid waste disposal fees levied by solid waste management districts. In particular, it consolidates repetitive language and eliminates provisions that are no longer applicable.

Definition of "solid wastes"

(R.C. 3734.01)

The Governor vetoed a provision that would have excluded from the definition of "solid wastes" in the Solid, Infectious, and Hazardous Waste Law nontoxic, nonhazardous, unwanted fired and unfired, glazed and unglazed,

structural shale and clay products. In addition, the Governor vetoed a second provision that would have excluded spent petroleum refinery hydrotreating, hydrorefining, and hydrocracking catalysts that are used to produce ferrovandium, iron nickel molybdenum, and calcium aluminate alloys for the steel, iron, and nickel industries unless the catalysts are disposed of at a licensed solid waste facility or are accumulated speculatively. The act defines "accumulated speculatively" to have the same meaning as in rules adopted by the Director of Environmental Protection under the Solid, Infectious, and Hazardous Waste Law. This definition was not vetoed by the Governor.

Construction and demolition debris facilities

Moratorium

(Section 513.03)

The act provides that notwithstanding any provision of law to the contrary and during the period beginning July 1, 2005, and ending December 31, 2005, the Director of Environmental Protection or a board of health is not permitted to issue a license to open a new construction and demolition debris facility under the Construction and Demolition Debris Law and rules adopted under it. Except as otherwise provided by the act, the moratorium applies both with respect to an application for a license to open a new construction and demolition debris facility that is submitted on or after the effective date of the act and to an application for such a license that has been submitted to the Director or a board of health prior to the act's effective date, but concerning which a license for a facility has not been issued as of that effective date.

The board of county commissioners of a county may request the Director or a board of health to continue to process an application for a license to open a new construction and demolition debris facility in that county that has been submitted to the Director or board of health prior to the act's effective date. After receiving such a request, the Director or board of health may then issue a license for the new construction and demolition debris facility notwithstanding the moratorium established by the act.

The moratorium does not apply to a license for a new construction and demolition debris facility if the new facility will be located adjacent or contiguous to a previously licensed construction and demolition debris facility. The moratorium also does not apply to an expansion of or other modification to an existing licensed construction and demolition debris facility.

Construction and Demolition Debris Facility Study Committee

(Section 513.03)

The act creates the Construction and Demolition Debris Facility Study Committee composed of the following 13 members:

- (1) Three members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (2) Three members of the Senate appointed by the President of the Senate;
- (3) The Director of Environmental Protection or the Director's designee;
- (4) One member representing health districts in Ohio appointed by the Governor;
- (5) Three members representing the construction and demolition debris industry in the state appointed by the Governor, one of whom must be the owner of both a construction and demolition debris facility and a solid waste disposal facility; and
- (6) Two members representing environmental consulting organizations or firms in Ohio appointed by the Governor.

Appointments must be made not later than 15 days after the effective date of the act. Members are not permitted to receive compensation for their service on the Committee or reimbursement for expenses incurred related to that service.

The Committee must study the laws of Ohio governing construction and demolition debris facilities and the rules adopted under those laws and must make recommendations to the General Assembly regarding changes to those laws, including, but not limited to, recommendations concerning the following topics:

- (1) The establishment of a code of ethics for owners and operators of construction and demolition debris facilities;
- (2) The establishment of best management practices;
- (3) Licensing requirements;
- (4) Testing and monitoring requirements and protocols;
- (5) Siting and setback criteria for construction and demolition debris facilities;



- (6) State and local oversight and regulatory authority;
- (7) Fees;
- (8) The regulation of construction and demolition debris from sources inside and outside the state; and
- (9) The closure process for construction and demolition debris facilities.

The Committee must submit a report of its study and any recommendations that it has developed to the General Assembly not later than September 30, 2005. The Committee ceases to exist on the date on which it submits its report. The act requires the General Assembly to enact legislation based on the recommendations of the Committee as soon as is practicable.

Exclusion from construction and demolition debris disposal fee

(R.C. 3714.07)

Continuing law establishes a 30¢ per cubic yard or 60¢ per ton fee, as applicable, on the disposal of construction and demolition debris at a construction and demolition debris facility or at a solid waste facility. However, under law largely retained by the act, the requirement that the fee be levied on the disposal of construction and demolition debris at a solid waste facility does not apply if there is no licensed construction and demolition debris facility within 40 miles of the solid waste facility as determined by a facility's property boundaries. The act revises this exclusion by reducing the distance between facilities to within 35 miles rather than within 40 miles.

In addition, the act exempts from both the continuing fee and the new fees established by the act (see below) the disposal at a licensed construction and demolition debris facility of source separated materials that are exclusively composed of reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone when either of the following applies:

(1) The materials are placed within the limits of construction and demolition debris placement at the facility as specified in the facility's license, are not placed within the unloading zone of the facility, and are used as a fire prevention measure in accordance with rules adopted by the Director under the Construction and Demolition Debris Law; or

(2) The materials are not placed within the unloading zone of the facility or within the limits of construction and demolition debris placement at the facility as specified in the facility's license, but are used as fill material, either alone or in conjunction with clean soil, sand, gravel, or other clean aggregates, in legitimate

fill operations for construction purposes at the facility or to bring the facility up to a consistent grade.

New construction and demolition debris disposal fees to fund projects of soil and water conservation districts and recycling and litter prevention program

(R.C. 1502.02, 1515.14, 3714.073, and 5733.122 (repealed))

As discussed above, continuing law establishes a construction and demolition debris disposal fee of 60¢ per ton or 30¢ per cubic yard, the proceeds of which must be used by the OEPA or a local board of health, as applicable, to administer the Construction and Demolition Debris Law and rules adopted under it. In addition, continuing law authorizes the Director of Environmental Protection to adopt a fee of 10¢ per ton or 5¢ per cubic yard for certain ground water monitoring purposes related to construction and demolition debris facilities.

The act establishes an additional 25¢ per ton or 12.5¢ per cubic yard fee on the disposal of construction and demolition debris and requires the proceeds of the new fee to be credited to the Soil and Water Conservation District Assistance Fund, which is created by the act. The Fund must be used to provide funding to soil and water conservation districts as matching money for local contributions to the districts.

Further, the act establishes a second additional fee of 75¢ per ton or 37.5¢ per cubic yard on the disposal of construction and demolition debris and requires the proceeds to be credited to the continuing Recycling and Litter Prevention Fund, which is administered by the Division of Recycling and Litter Prevention in the Department of Natural Resources. The Division uses money in the Fund to operate its recycling and litter prevention program, which includes the awarding of grants.

Under prior law, funding for the Recycling and Litter Prevention Fund came from a corporate franchise tax on litter stream products. The act retains that tax, but eliminates the crediting of receipts from the tax to the Fund.

The act specifies that the two new construction and demolition debris disposal fees do not apply to the disposal of construction and demolition debris at a licensed solid waste facility if the owner or operator of the solid waste facility chooses to collect fees on the disposal of the construction and demolition debris that are identical to the fees that are collected under the Solid Waste Management Districts Law and the Solid, Infectious, and Hazardous Waste Law on the disposal of solid wastes at that facility.

Hazardous waste cleanups

Use of Environmental Protection Remediation Fund for cleanups

(R.C. 3734.20, 3734.21, 3734.22, and 3734.23)

Under continuing law, the Director of Environmental Protection may conduct investigations at locations where hazardous waste was treated, stored, or disposed of for the purpose of determining if the waste constitutes a substantial threat to public health or safety or is causing or contributing to air or water pollution or soil contamination and may conduct clean-up activities at such locations if he finds that such a threat exists. Further, the Director may acquire any hazardous waste facility or solid waste facility containing significant quantities of hazardous waste that because of the presence of hazardous waste constitutes an imminent and substantial threat to public health or safety or results in air or water pollution or soil contamination. After acquisition the Director is required to perform closure or other measures necessary to abate conditions causing or contributing to air or water pollution or soil contamination or conditions that constitute a threat to public health or safety.

Continuing law authorizes these investigation, clean-up, and acquisition activities to be conducted with moneys in the Hazardous Waste Clean-up Fund. The act authorizes the Director to expend moneys from the continuing Environmental Protection Remediation Fund for those activities as well as the Hazardous Waste Clean-up Fund. Further, under the act, moneys resulting from any agreement with a landowner to reimburse the Director for the costs of those activities or moneys recovered by the Director through judicial actions are required to be deposited in either the Hazardous Waste Clean-up Fund or the Environmental Protection Remediation Fund, from whichever Fund moneys were expended, rather than only the former Fund.

Environmental clean-up agreements

(R.C. 3734.22)

Continuing law authorizes the Director, before beginning to clean up any facility, to enter into an agreement with the owner of land on which the facility is located, or with the owner of the facility, specifying the measures to be performed and authorizing the Director, employees of the OEPA, or contractors retained by the Director to enter on the land and perform specified measures. Under prior law, each agreement was required to contain provisions for the reimbursement of the state for the costs of the cleanup. Further, upon a breach of the reimbursement provisions by the owner of the land or facility, the Director was required to record the unreimbursed portion of the costs of cleanup at the office of the county

recorder of the county in which the facility was located. The act makes the reimbursement requirement optional. Thus, agreements may be entered into without a provision for reimbursement of the state's clean-up costs. Further, the requirement that the Director record unreimbursed costs upon breach of an agreement is also made optional by the act. The act retains a provision stating that costs so recorded constitute a lien against the property on which the facility is located.

Contract bidding requirements

(R.C. 3704.21 and 3704.23)

As discussed above, under continuing law, the Director may expend moneys to acquire property for the purpose of conducting clean-up activities or may conduct a cleanup without acquiring the property. In either case, the Director must develop a plan for the cleanup. Such a plan may include entering into a contract with a contractor for purposes of the cleanup. Continuing law establishes bidding procedures for contractors. Under prior law, those procedures applied only if the cleanup was conducted on property acquired by the Director and under certain circumstances if the Director had not acquired property. The act clarifies that the bidding procedures apply to all situations in which the Director conducts clean-up activities.

Exemption from Department of Administrative Services contracting requirements

(R.C. 123.01)

Continuing law requires the Director of Administrative Services to make contracts for and supervise the construction and repair of buildings under the control of a state agency with certain exceptions. The act also exempts from this requirement any contracts for the construction of projects that do not require the issuance of a building permit or the issuance of a certificate of occupancy and that are necessary to remediate conditions at a hazardous waste facility, solid waste facility, or other location at which the Director of Environmental Protection has reason to believe there is a substantial threat to public health or safety or the environment. The act grants authority to enter into such contracts to the Director of Environmental Protection.

Exemption from fees for certain clean-up activities

(R.C. 3734.57 and 3734.573)

The act authorizes the Director of Environmental Protection to issue an order exempting from the state, solid waste management district, and local

government solid waste disposal fees and solid waste management district solid waste generation fees solid wastes, including, but not limited to, scrap tires, that are generated, transferred, or disposed of as a result of certain contracts providing for the expenditure of public funds concerning certain clean-up activities. Specifically, the fees do not apply to contracts entered into by the Administrator or Regional Administrator of the United States Environmental Protection Agency, the Director of Environmental Protection, or the Director of Administrative Services on behalf of the Director of Environmental Protection for the purpose of remediating conditions at a hazardous waste facility, solid waste facility, or other location at which the Administrator, Regional Administrator, or Director of Environmental Protection has reason to believe that there is a substantial threat to public health or safety or the environment or that conditions are causing or contributing to air or water pollution or soil contamination. Such an order issued by the Director must include a determination that the amount of the fees not received by a solid waste management district as a result of the order will not adversely impact the implementation and financing of the district's approved solid waste management plan and any approved amendments to the plan. The act declares such an order a final action of the Director.

Repayment of clean-up costs to Hazardous Waste Clean-up Fund

(R.C. 3734.28 and 3745.12)

Under continuing law, OEPA is authorized to expend money from the Hazardous Waste Clean-up Fund to pay the costs of clean-up activities under the state statutes governing hazardous waste and to recover the money expended for such a clean-up in a civil action. However, under prior law, any money recovered was required to be deposited in the continuing Immediate Removal Fund, which is used for other environmental clean-ups. The act instead requires that money expended from the Hazardous Waste Clean-up Fund and recovered in a civil action be returned to the Hazardous Waste Clean-up Fund.

Scrap Tire Management Program

Fee on tire sales

(R.C. 3734.901)

Continuing law establishes a 50¢ per tire fee on the sale of tires. The fee provides revenue to defray the cost of administering and enforcing the law governing the management of scrap tires, rules adopted under that law, and terms and conditions of orders, variances, and licenses issued under that law; to abate accumulations of scrap tires; to make grants to promote research regarding alternative methods of recycling scrap tires and loans to promote the recycling or

recovery of energy from scrap tires; and to defray the costs of administering the collection of the fee. The fee was scheduled to sunset on June 30, 2006. The act extends the sunset to June 30, 2011.

Funding for Department of Taxation's administration of fee on tire sales

(R.C. 3734.9010)

Under law largely retained by the act, a percentage of the amounts paid to the Treasurer of the State pursuant to the Scrap Tire Management Program must be certified directly to the credit of the Tire Fee Administrative Fund for appropriation to the Department of Taxation for use in paying the Department's costs in administering the fee on tires that is used to fund the Program. Under prior law, that percentage was 4%. The act reduces the amount of money that the Department receives from 4% to 2%.

Cost recovery for scrap tire cleanups

(R.C. 3734.85)

Ongoing law establishes procedures by which the Director of Environmental Protection may order the removal of accumulations of scrap tires for transportation to a scrap tire storage, monocell, monofill, or recovery facility. If the person to whom an order is given fails to comply with the order, the Director may perform the necessary removal actions. In that case, the person to whom the removal order is issued is liable to the Director for the costs incurred by him in conducting the removal and is liable for other costs associated with the removal. Upon the written request of the Director, the Attorney General must bring a civil action against the person responsible for the accumulation of the scrap tires that were the subject of the removal operation for the recovery of the costs of the removal action. Under law revised by the act, if the Director is unable to recover the costs through a civil action, he must certify them to the county recorder of the county in which the accumulation of scrap tires was located. The recorder must record the costs as a lien on the property. The costs constitute a lien until discharged.

The act alters the procedures related to cost recovery by requiring the Director to keep an itemized record of costs and record the costs at the office of the county recorder after completing the actions for which the costs were incurred rather than after a civil action has been adjudicated.

Fees for air pollution control permits to install based on process weight rates

(R.C. 3745.11(F))

Continuing law requires a person to pay a fee for a permit to install under the Air Pollution Control Law for processes that are used in specified industries that are identified by applicable standard industrial classification codes. Under former law, the specified industries included all of the following: bituminous coal and lignite mining; bituminous coal and lignite mining services; dimension stone; crushed and broken limestone; crushed and broken stone, not elsewhere classified; construction sand and gravel; industrial sand; cut stone and stone products; and minerals and earth, ground or otherwise treated. The act revises the industrial classifications by eliminating seven classifications and adding nine classifications. The table below shows the former classifications eliminated by the act and the classifications added by it:

Industrial classifications eliminated by the act	Industrial classifications added by the act
1211 Bituminous coal and lignite mining	Major group 10, metal mining
1213 Bituminous coal and lignite mining services	Major group 12, coal mining
1411 Dimension stone	Major group 14, mining and quarrying of nonmetallic minerals
1422 Crushed and broken limestone	
1427 Crushed and broken stone, not elsewhere classified	Industry group 204, grain mill products
1442 Construction sand and gravel	2873 Nitrogen fertilizers
1446 Industrial sand	2874 Phosphatic fertilizers
	4221 Grain elevators (storage only)
	5159 Farm related raw materials
	5261 Retail nurseries and lawn and garden supply stores

The act retains two classifications: 3281 Cut stone and stone products, and 3295 Minerals and earth, ground or otherwise treated.

Extension of various fee-related provisions

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under 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 continuing law. Prior law required the fee to be paid through June 30, 2006. The act extends the fee through June 30, 2008.

Water pollution control fees and safe drinking water fees

(R.C. 3745.11(L), (M), and (N) and 6109.21)

Under 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, 2006, and a fee of \$100 plus 0.2 of 1% of the estimated project cost, up to a maximum of \$5,000, on and after July 1, 2006. Under the act, the first tier fee is extended through June 30, 2008, and the second tier applies to applications submitted on or after July 1, 2008.

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, 2004, and January 30, 2005. The act extends payment of the fees and the fee schedules to January 30, 2006, and January 30, 2007.

In addition to the fee schedules described above, continuing law imposes a \$7,500 surcharge to the annual discharge fee applicable to major industrial dischargers. Formerly, the surcharge was required to be paid by January 30, 2004, and January 30, 2005. The act requires the surcharge to be paid annually by January 30, 2006, and January 30, 2007.

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, 2004, and January 30, 2005. The act requires the fee to be paid annually by January 30, 2006, and January 30, 2007.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in continuing law. The fee for initial licenses and license renewals formerly was required in statute through June 30, 2006, and had to be paid annually prior to January 31, 2006. The act extends the initial license and license renewal fee through June 30, 2008, and requires the fee to be paid annually prior to January 31, 2008.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. 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, 2006, and \$15,000 on and after July 1, 2006. The act instead specifies that the \$20,000 limit applies to persons applying for plan approval through June 30, 2008, and the \$15,000 limit applies to persons applying for plan approval on and after July 1, 2008.

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, 2006, and a schedule with lower fees is applicable on and after July 1, 2006. The act continues the higher fee schedule through June 30, 2008, and applies the lower fee schedule to evaluations conducted on or after July 1, 2008. The act continues through June 30, 2008, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.

Certification of operators of water supply systems or wastewater systems

(R.C. 3745.11(O))

Former law established a \$25 application fee through November 30, 2003, to take the examination for certification as an operator of a water supply system under the Safe Drinking Water Law or a wastewater system under the Water Pollution Control Law. Upon approval from the Director that an applicant was eligible to take the examination, the applicant had to pay a fee in accordance with a fee schedule that was in existence through November 30, 2003. Law revised 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 beginning December 1, 2003, through November 30, 2006, and a \$25 application fee on and after December 1, 2006. Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a statutory schedule. A higher schedule is established through November 30, 2006, and a lower schedule applies on and after December 1, 2006. The act eliminates the expired application fee and fee schedule, extends the higher application fee discussed above through November 30, 2008, applies the lower application fee beginning December 1, 2008, extends the continuing higher fee schedule through November 30, 2008, and applies the lower fee schedule beginning December 1, 2008.

Application fees under Water Pollution Control Law and Safe Drinking Water Law

(R.C. 3745.11(S))

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, 2006, and a nonrefundable fee of \$15 if the application is submitted on or after July 1, 2006. The act extends the \$100 fee through June 30, 2008, and applies the \$15 fee on and after July 1, 2008.

Similarly, under law retained in part by the act, a person applying for an NPDES permit through June 30, 2006, must pay a nonrefundable fee of \$200 at the time of application. On and after July 1, 2006, the nonrefundable application fee is \$15. The act extends the \$200 fee through June 30, 2008, and applies the \$15 fee on and after July 1, 2008.

Distribution of federal funding for NPDES program administration

(Section 206.27)

The act provides that on or after the date on which the United States Environmental Protection Agency (USEPA) approves the NPDES program to be administered by the Department of Agriculture under the Concentrated Animal Feeding Facilities Law, the Director of Environmental Protection, the Director of Agriculture, and the Director of Budget and Management must calculate the amount of compensation to be made to OEPA and to the Department of Agriculture from federal moneys disbursed and received for purposes of administering the NPDES program and must calculate the amount of state matching funding that is required for administering that program. OEPA and the Department of Agriculture may apply separately to USEPA for each agency's respective share of the federal moneys. If USEPA awards all federal moneys for administration of the NPDES program to one agency, that agency must transfer the appropriate amount of moneys to the other agency in accordance with the calculations of compensation made pursuant to the act.

Section 401 water quality certifications

(R.C. 3745.114, 6111.30, 6111.31, and 6111.32)

Background

Under the Clean Water Act (also known as the Federal Water Pollution Control Act), persons that propose to dredge or fill waters of the state, including wetlands, must apply to the United States Army Corps of Engineers (Army Corps) for a permit under section 404 of that Act.¹⁰⁵ The permit commonly is referred to as a "section 404 permit." Generally, a section 404 permit is required before a person may dredge or fill waters of the state, including wetlands. In addition, the Clean Water Act requires persons to receive a water quality certification under section 401 of the Act from the state that the dredging or filling will not result in a violation of certain water quality standards. The receipt of the certification from the state is a precondition to the issuance of the section 404 permit issued by the Army Corps. This certification is commonly referred to as a section 401 water quality certification. The act defines "section 401 water quality certification" to mean certification pursuant to section 401 of the Clean Water Act and the state Water Pollution Control Law and rules adopted under it that any discharge, as set

¹⁰⁵ *The Clean Water Act does not regulate isolated wetlands. State law thus has established a permit program for regulation of impacts to isolated wetlands. The program includes a system of tiered review for different categories of isolated wetlands.*

forth in section 401, will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act.

The act establishes statutory procedures for the issuance of section 401 water quality certifications for impacts to wetlands, streams, and other waters of the state. The act's requirements replace rules adopted by the Director of Environmental Protection under the Water Pollution Control Law pertaining to the procedures for the issuance of section 401 water quality certifications.

Application procedures and requirements

Under the act, applications for a section 401 water quality certification must be submitted on forms provided by the Director of Environmental Protection and must include all information required on those forms as well as all of the following:

(1) A copy of a letter from the Army Corps documenting its jurisdiction over the wetlands, streams, or other waters of the state that are the subject of the application;

(2) If the project involves impacts to a wetland, a wetland characterization analysis consistent with the Ohio Rapid Assessment Method;

(3) If the project involves a stream for which a specific aquatic life use designation has not been made, a use attainability analysis;

(4) A specific and detailed mitigation proposal, including the location and proposed legal mechanism for protecting the property in perpetuity;

(5) Applicable fees;

(6) Site photographs;

(7) Adequate documentation confirming that the applicant has requested comments from the Department of Natural Resources and the United States Fish and Wildlife Service regarding threatened and endangered species, including the presence or absence of critical habitat;

(8) Descriptions, schematics, and appropriate economic information concerning the applicant's preferred alternative, nondegradation alternatives, and minimum degradation alternatives for the design and operation of the project;

(9) The applicant's investigation report of the waters of the United States in support of a section 404 permit application concerning the project; and

(10) A copy of the Army Corps' public notice regarding the section 404 permit application concerning the project.

Not later than 15 business days after the receipt of an application for a section 401 water quality certification, the Director must review the application to determine if it is complete and must notify the applicant in writing as to whether the application is complete. If the Director fails to notify the applicant within 15 business days regarding the completeness of the application, the application is considered complete. If the Director determines that the application is not complete, the Director must include with the written notification an itemized list of the information or materials that are necessary to complete the application. If the applicant fails to provide the information or materials within 60 days after the Director's receipt of the application, the Director may return the incomplete application to the applicant and take no further action on the application. If the application is returned to the applicant because it is incomplete, the Director must return the review fee levied under the act to the applicant, but must retain the application fee (see, "Fees," below).

Not later than 21 days after a determination that an application is complete, the applicant must publish public notice of the Director's receipt of the complete application in a newspaper of general circulation in the county in which the project that is the subject of the application is located. The public notice must be in a form acceptable to the Director. The applicant is required to promptly provide the Director with proof of publication. The applicant may choose, subject to review by and approval of the Director, to include in the public notice an advertisement for an antidegradation public hearing on the application pursuant to requirements in continuing law regarding antidegradation review. A public comment period of 30 days is required following the publication of the public notice.

Under the act, if the Director determines that there is significant public interest in a public hearing as evidenced by the public comments received concerning the application and by other requests for a public hearing on the application, the Director or the Director's representative must conduct a public hearing concerning the application. The applicant must publish notice of the public hearing, subject to review and approval by the Director, at least 30 days prior to the date of the hearing in a newspaper of general circulation in the county in which the project that is the subject of the application is to take place. If a public hearing is requested concerning an application, the Director must accept comments concerning the application until five business days after the public hearing. Any public hearing must take place not later than 100 days after the application is determined to be complete.

The Director must forward all public comments concerning an application that are received through the public involvement process to the applicant not later



than five business days after receipt of the comments by the Director. The applicant must respond in writing to written comments or to deficiencies identified by the Director during the course of reviewing the application not later than 15 days after receiving or being notified of them. The Director must issue or deny a section 401 water quality certification not later than 180 days after the complete application for the certification is received. The Director must provide an applicant for a section 401 water quality certification with an opportunity to review the certification prior to its issuance.

The act requires the Director to maintain an accessible database that includes environmentally beneficial water restoration and protection projects that may serve as potential mitigation projects for projects in the state for which a section 401 water quality certification is required. A project's inclusion in the database does not constitute an approval of the project.

Use of standards and procedures to evaluate mitigation proposals

Under the act, all substantive wetland, stream, or lake mitigation standards, criteria, scientific methods, processes, or other procedures or policies that are used in a uniform manner by the Director in evaluating the adequacy of a mitigation proposal contained in an application for a section 401 water quality certification must be adopted and reviewed in accordance with the Administrative Procedure Act's rule adoption provisions before those standards, criteria, or scientific methods have the force of law. Until that time, any such mitigation standards, criteria, scientific methods, processes, or other procedures or policies that are used by or approved for use by the Director to evaluate, measure, or determine the success, approval, or denial of a mitigation proposal, but that have not been subject to review under those provisions of the Administrative Procedure Act cannot be used as the basis for any certification or permit denial or as a standard applied to mitigation unless the applicant has been notified in advance that additional mitigation standards, criteria, scientific methods, processes, or procedures will be considered as part of the review process.

Mitigation requirements

The Governor vetoed provisions that would have established mitigation requirements for wetland or stream impacts for which a section 401 water quality certification was issued. The requirements varied depending on what type of body of water was being impacted. For impacts to one acre or less of category 1 or category 2 wetlands, the applicant would have been required to conduct mitigation within the same Army Corps district as the impacts, provided that the mitigation was conducted within that portion of the district that was located within Ohio. "Category 1 wetland" and "category 2 wetland" would have been defined to mean those categories described in rules adopted under the Water Pollution Control Law

and as determined to be a category 1 or category 2 wetland, respectively, through application of the Ohio Rapid Assessment Method (ORAM) for Wetlands version 5.0, including the ORAM version 5.0 quantitative score calibration dated August 15, 2000, unless an application for a section 401 water quality certification was submitted prior to February 28, 2001, in which case the permit applicant could elect to proceed in accordance with the ORAM version 4.1. ORAM is a scoring system used by OEPA to determine into which category a given wetland fits.

For all other wetland or stream impacts, mitigation would have been required to occur in the following preferred order:

(1) Practicable on-site mitigation;

(2) Mitigation within the eight-digit United States Geological Survey watershed or mitigation within the service area of a wetland mitigation bank approved by a mitigation bank team;

(3) Mitigation in an adjacent eight-digit United States Geological Survey watershed;

(4) Mitigation within the same Army Corps district as the impacts, provided that the mitigation was conducted within that portion of the district that was located within Ohio.

As a result of the Governor's veto, mitigation requirements established in rules adopted under the Water Pollution Control Law will continue to apply.

Fees

Under prior law, there was no authority for OEPA to charge fees for the issuance of section 401 water quality certifications. The act establishes a schedule of fees applicable to section 401 water quality certifications by requiring a person applying for a certification to pay an application fee of \$200 at the time of application plus any of the following fees, as applicable:

(1) If the water resource to be impacted is a wetland, a review fee of \$500 per acre of wetland to be impacted;

(2) If the water resource to be impacted is a stream, one of the following fees, as applicable:

(a) For an ephemeral stream, a review fee of \$5 per linear foot of stream to be impacted, or \$200, whichever is greater;

(b) For an intermittent stream, a review fee of \$10 per linear foot of stream to be impacted, or \$200, whichever is greater;

(c) For a perennial stream, a review fee of \$15 per linear foot of stream to be impacted, or \$200, whichever is greater.

The act defines "ephemeral stream" to mean a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and that has channel bottom that is always above the local water table. "Intermittent stream" is defined to mean a stream that is below the local water table and flows for at least a part of each year and that obtains its flow from both surface runoff and ground water discharge. Finally, "perennial stream" means a stream or a part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface water runoff. "Perennial stream" does not include an intermittent stream or an ephemeral stream.

(3) If the water resource to be impacted is a lake, a review fee of \$3 per cubic yard of dredged or fill material to be moved.

One-half of all applicable fees levied under the act are due at the time of application for a section 401 water quality certification. The remainder of the fees must be paid upon the final disposition of the application for a certification. The total fee paid under the act cannot exceed \$25,000 per application. However, if the applicant is an Ohio county, township, or municipal corporation, the total fee cannot exceed \$5,000 per application. All money collected from the fees must be deposited in the state treasury to the credit of the Surface Water Protection Fund created in continuing law for the purpose of funding OEPA's administration of surface water protection programs.

The act specifies that the new fees do not apply to state agencies or to projects that are authorized by OEPA's general certifications of nationwide permits or general permits issued by the Army Corps. Further, the act exempts coal mining and reclamation operations from the fees for one year after the act's effective date.

Certification of professionals under Voluntary Action Program Law

(R.C. 3746.04 and 3746.071)

Ongoing law requires the Director of Environmental Protection to adopt rules under the Voluntary Action Program Law that establish standards governing the conduct of certified professionals, criteria and procedures for the certification of professionals to issue no further action letters under that Law, and criteria for



the suspension and revocation of those certifications. Under law retained in part by the act, the issuance, denial, suspension, and revocation of those certifications are subject to the procedures established in the Environmental Protection Agency Law. Under that Law, such actions must be published in a newspaper of general circulation. The act specifies that, in lieu of publishing an action regarding a certification in a newspaper of general circulation as required under the Environmental Protection Agency Law, an issuance, denial, renewal, suspension, or revocation must be published on OEPA's web site and in OEPA's weekly review not later than 15 days after the date of the issuance, denial, renewal, suspension, or revocation of the certification and not later than 30 days before a hearing or public meeting concerning the action. The act adds that certification renewals also must be published.

Continuing law allows the Director to suspend or revoke a certified professional's certification for a violation of or failure to comply with any of several requirements and obligations governing certified professionals established under the Voluntary Action Program Law. Under prior law, the Director was required to take such action in accordance with the Environmental Protection Agency Law. The act instead requires the Director to take such action in accordance with rules adopted under the Voluntary Action Program Law.

Clean Diesel School Bus Fund

(R.C. 3704.144)

The act creates the Clean Diesel School Bus Fund in the state treasury consisting of money from gifts, grants, and contributions for the purpose of adding pollution control equipment to diesel-powered school buses, including contributions made pursuant to the settlement of an administrative or civil action brought at the request of the Director of Environmental Protection under the Air Pollution Control Law, the Construction and Demolition Debris Law, the Solid, Infectious, and Hazardous Waste Law, the Safe Drinking Water Law, or the Water Pollution Control Law. The Director must use money credited to the Fund to make grants to school districts in the state for the purpose of adding pollution control equipment to diesel-powered school buses and to pay OEPA's costs incurred in administering the grant program. In addition, the Director may use money credited to the Fund to make grants to school districts for the purpose of maintaining pollution control equipment that is installed on diesel-powered school buses and to pay the additional cost incurred by a school district for using ultra-low sulfur diesel fuel instead of diesel fuel for the operation of diesel-powered school buses.

In making grants, the Director must give priority to school districts that are located in a county that is designated as nonattainment by USEPA for the fine



particulate national ambient air quality standard under the federal Clean Air Act. In addition, the Director may give a higher priority to a school district that employs additional measures that reduce air pollution from the district's school bus fleet.

The act requires the Director to adopt rules establishing procedures and requirements that are necessary to implement the grant program, including procedures and requirements governing applications for grants.

eTECH OHIO COMMISSION

- Eliminates the Ohio SchoolNet Commission and the Ohio Educational Telecommunications Network Commission and transfers their functions, assets, liabilities, and employees to the eTech Ohio Commission created by the act.

Elimination of the Ohio SchoolNet Commission and the Ohio Educational Telecommunications Network Commission and creation of the eTech Ohio Commission

(R.C. 3301.80 (repealed), 3353.01, 3353.02, 3353.03, 3353.04, 3353.06, and 3353.07; conforming changes in R.C. 125.05, 183.28, 3314.074, 3317.06, 3317.50, 3317.51, 3319.22, and 3319.235; Sections 315.09, 315.10, 315.11, and 316.03)

Effective July 1, 2005, the act eliminates both the Ohio SchoolNet Commission and the Ohio Educational Telecommunications Network Commission (ETN Commission) and transfers their duties and authorities, assets, liabilities, and employees to the eTech Ohio Commission (eTech), which the act creates.

Ohio SchoolNet Commission

The Ohio SchoolNet Commission was an independent state agency charged with providing financial assistance and technical services to school districts and community schools in the acquisition and implementation of educational technology. Responsibilities of the Commission included making grants to districts and schools for the procurement of support services for their educational technology and establishing model professional development programs to assist teachers in integrating technology into their classrooms. The Commission was



made up of 13 members, although it employed an executive director to carry out its duties.

Ohio Educational Telecommunications Network Commission

The ETN Commission was an independent state agency authorized to own and operate transmission and interconnection facilities for an educational television, radio, or radio reading services network; develop and provide programming to noncommercial radio and television stations (for which the Commission could charge fees); and provide financial and technical assistance to educational broadcasting entities throughout Ohio to sustain their operation. The Commission was made up of the Superintendent of Public Instruction, Chancellor of the Ohio Board of Regents, Director of Administrative Services, and eight members appointed by the Governor.

Merging of functions under the new eTech Ohio Commission

(R.C. 3353.02 and 3353.03; Sections 315.09, 315.10, and 316.03)

The new eTech Ohio Commission is governed by a 13-member body, including four nonvoting legislative members (one from each political party in each chamber). The voting members include six representatives of the public and the Superintendent of Public Instruction, Chancellor of the Ohio Board of Regents, and the Director of Administrative Services. Four public members must be appointed to four-year staggered terms by the Governor, with the approval of the Senate. Two public members, one each selected by the Speaker of the House and the President of the Senate, must be appointed to four-year terms. Public members are limited to two consecutive four-year terms and may be removed for cause. Public members receive reimbursement under OBM guidelines for actual and necessary expenses, but do not receive compensation. The Governor must appoint the chairperson of the Commission from among the voting members.

On July 1, 2005, or as soon as possible thereafter, appointing authorities must appoint the six public members to the eTech Commission and the Governor, with Senate approval, must appoint an interim executive director for the Commission. The Governor fixes the compensation of the interim director, who has the same powers as a director appointed by the Commission. The interim director serves until the Commission can appoint a director, but for no longer than one year.¹⁰⁶

¹⁰⁶ *The act authorizes the Director of Budget and Management, or a designee, to exercise any authority of the Commission until the Commission's members hold their first meeting and the interim executive director has been appointed (Section 316.03(C)).*

The act requires the Commission to establish advisory groups as needed for individual educational technology issues, including the technology needs of educators, learners, and the public. Each group must be comprised of representatives of individuals or organizations with an interest in the topic addressed by that group.

The act assigns specific duties to the executive director and explicitly states that the director has "no authority other than that provided by law or delegated" by the Commission. The statutory duties include (1) direction of employees in administering all Commission programs, (2) providing leadership and support in extending the knowledge of Ohioans by promoting *equal* access to and use of all forms of educational technology, as directed by the Commission, (3) and providing financial and other assistance to school districts and other educational institutions, noncommercial broadcasting entities, and, if approved by the Commission, other educational technology organizations for the acquisition and utilization of educational technology.

After its creation, the eTech Commission assumes all ongoing business of the former commissions and the rules of the commissions remain in effect until changed by the eTech Commission.

Existing employees of the two abolished agencies must either be transferred to eTech or dismissed effective July 1, 2005. Employees of the Ohio SchoolNet Commission, who were all in the unclassified service while employed by SchoolNet, remain in the unclassified service following their transfer to eTech. Therefore, those employees are not subject to the Public Employee Collective Bargaining Law. ETN Commission employees, however, who were subject to the Collective Bargaining Law while employed by that Commission, continue to be included in their former bargaining units as eTech employees and may collectively bargain with eTech as their public employer. All eTech employees hired after July 1, 2005, are exempt from the Collective Bargaining Law, even if they fill positions that were formerly part of a bargaining unit.

Changes in duties of the former commissions when transferred to the eTech Ohio Commission

(R.C. 3353.04 and 3353.06)

The act makes changes to some of the former powers and duties of the two abolished commissions when these powers and duties are transferred to eTech, as follows:



(1) Prior law permitted the ETN Commission to utilize fees received from affiliate broadcasting stations for *legal fees*. The new eTech Commission does not have that authority.

(2) The act requires the eTech Commission to consult with program participants when establishing guidelines governing purchasing and procurement by those participants, when considering the efficiency of statewide procurement prior to allocating program funding, and when establishing a systems support network. Such consultation was not required under prior law when performing these duties.

(3) The act allows the eTech Commission to "promote accessibility to educational products aligned with" the academic content standards adopted by the State Board of Education and to ensure that, if recipients of financial assistance from the Commission produce such products, they are appropriately aligned with the standards.¹⁰⁷

(4) Prior law specifically granted authority for the ETN Commission to determine programs to be distributed through the educational telecommunications network. The act removes this authority.

(5) Prior law permitted the ETN Commission to own and operate transmission and interconnection facilities. The act allows the eTech Commission to own *or* operate such facilities.¹⁰⁸ (It is not clear whether this is a substantive change.) In addition, the Commission may enter into agreements with educational broadcasting stations or radio reading services for operation of the interconnection.

(6) The act permits the eTech Commission to consult with providers on the coordination of federal funds for *equipment*, as opposed to funds for *educational broadcasting development*, as the ETN Commission could do under prior law.

(7) The act eliminates the ETN Commission's authority to transfer equipment to educational broadcasting stations in exchange for "services." It also

¹⁰⁷ *As required by continuing law, the State Board has adopted academic content standards for grades K through 12 in reading, writing, math, science, and social studies (R.C. 3301.079(A)).*

¹⁰⁸ *Transmission facilities are "structures, equipment, material, and services used in the transmission of educational television, radio, or radio reading service programs." Interconnection facilities are "equipment, material, and services used to link one location to another location. . .by means of telephone line, coaxial cable, microwave relays, or other available technologies." (R.C. 3353.01.)*

eliminates the ETN Commission's specific authority to enter into agreements with noncommercial providers for the simultaneous broadcasting of identical programs or distribution of the programs by transcription disc, video or audio tapes, or film. However, the eTech Commission retains the right to execute contracts and agreements to carry out the Commission's duties.

As under prior law for the Ohio SchoolNet Commission, the act specifically exempts the eTech Commission from competitive bidding requirements.

GENERAL ASSEMBLY

- Requires state agencies that must submit a report, recommendation, or other similar document to the General Assembly in a hard copy format to, when technologically feasible, submit it through electronic means, rather than in the hard copy format, and display it on the agency's web site.

Submission of legislative reports via electronic means

(R.C. 101.68(D))

The act provides that, notwithstanding any statutory provision to the contrary, whenever a statute or rule requires a state agency to submit a report, recommendation, or other similar document to the General Assembly or its members, or a chamber of the General Assembly or the chamber's members, in a paper, book, or other hard copy format, the report, recommendation, or other similar document, to the extent technologically feasible, must be submitted through electronic means rather than in the hard copy format. Furthermore, the agency must display the report, recommendation, or other similar document on a web site it maintains.

DEPARTMENT OF HEALTH

- Requires that the Ohio Department of Health (ODH) designate certain rural hospitals as critical access hospitals.
- Repeals the requirement that ODH make financial assistance available to county tuberculosis control programs.



- Eliminates the option that a county or district tuberculosis control unit be a county tuberculosis program receiving financial assistance from ODH.
- Repeals the requirement that ODH reimburse boards of county commissioners for the cost of detaining indigent persons with tuberculosis.
- Requires that ODH adopt rules to implement the "Choose Life" Fund.
- Provides that it is not the General Assembly's intent that ODH create a new position to implement and administer the "Choose Life" Fund.
- Extends, until July 1, 2007, the scheduled termination of the moratorium on reviewing applications for certificates of need for long-term care beds.
- Requires specified health and safety standards and periods of operation to be met for a CON application to be reviewed under the moratorium's provisions requiring continued review of applications for the relocation of long-term care beds within the same county.
- Adds psychiatrists to the primary care specialists eligible for the Physician Loan Repayment Program to fill a primary care need in underserved areas of the state.
- Requires that ODH administer the J-1 Visa Waiver Program to recruit foreign-born physicians educated in the United States to serve in underserved areas of the state.
- Requires that ODH charge a fee of \$3,571 for each J-1 Visa Program application it accepts.
- Increases the fees for birth records, death certificates, and divorce and dissolution of marriage decrees to provide funds for grants for family violence shelters.
- Authorizes the Public Health Council to adopt rules establishing an inspection fee for hospice care facilities not to exceed \$1,750.
- Increases the application and annual renewal licensing and inspection fee for nursing homes and residential care facilities.

- Authorizes ODH to revoke or refuse to issue a license to operate a nursing home or residential care facility if the licensee or applicant demonstrates a long-standing pattern of violations of Ohio law governing nursing homes and residential care facilities that caused physical, emotional, mental, or psychosocial harm to one or more residents.
- Prohibits the transfer or assignment of the right to operate a nursing home during the adjudication of a license revocation.
- Exempts Medicare-qualified "religious nonmedical health care institutions" that rely solely on religious methods of healing from the nursing home laws requiring use of nurse aides who have undergone nurse aide training and competency evaluation programs.
- Eliminates a requirement that ODH convene the Nursing Facility Regulatory Reform Task Force if the Secretary of the U.S. Department of Health and Human Services approves development of an alternative regulatory procedure for nursing facilities subject to federal regulation.
- Increases the adult care facility inspection fee to \$20 per bed (from \$10) and requires that the fee be paid following each inspection and each issuance or renewal of a license.
- Increases radiology registration and inspection fees.
- Removes an exemption from applying for Medicaid that applies to applicants for the Program for Medically Handicapped Children for whom applying for Medicaid violates their religious beliefs.
- Requires the Public Health Council to revise rules to return financial eligibility requirements to the levels in effect prior to October 13, 2003.
- Creates the Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps.
- Reimburses free clinics for 80%, up to \$20,000, of the premiums the clinics pay for medical liability insurance coverage.

Critical access hospitals

(R.C. 3701.073)

Under federal Medicare law, certain rural hospitals must be designated as critical access hospitals in order to participate in the Medicare Rural Hospital Flexibility Program. The act requires the Director of Health to designate certain hospitals registered as acute care hospitals with the Department of Health as critical access hospitals if the hospitals meet the following requirements:

(1) Do not have more than 25 acute care and swing beds in use at any time for the furnishing of extended care or acute care inpatient services;

(2) Have a length of stay not more than 96 hours per patient, on an annual average basis;

(3) Provide inpatient, outpatient, emergency, laboratory, radiology, and 24-hour emergency care services;

(4) Have network agreements for patient referral and transfer, a communication system for telemetry systems, electronic sharing of patient data, provision for emergency and non-emergency transportation, and assure credentialing and quality assurance;

(5) Was certified as a critical access hospital by the Centers for Medicare and Medicaid Services between January 1, 2001 and December 31, 2005, or is located in a rural area.¹⁰⁹

Funding for county tuberculosis control programs and detention costs

(R.C. 339.72, 339.77 (repealed), 339.88, and 3701.146)

County tuberculosis programs

Each board of county commissioners is required to provide for the county to be served by a tuberculosis control unit by designating a county tuberculosis control unit or by entering into an agreement with one or more boards of county commissioners of other counties under which the boards jointly designate a district tuberculosis control unit. Under prior law, the entity designated the county or

¹⁰⁹ R.C. 3701.073. An area is designated as "rural" if: (1) it is an area within an Ohio metropolitan area designated as a rural area by the U.S. Department of Health and Human Services in accordance with certain requirements of federal rules, (2) it is a non-metropolitan county as designed by the U.S. Office of Management and Budget (OMB), or (3) it is in a rural ZIP code within a metropolitan county as designated by OMB.

district tuberculosis control unit could be (1) a communicable disease control program operated by a local board of health, (2) a tuberculosis clinic established by a board of county commissioners, or (3) a tuberculosis program operated by a county receiving funds the Director of Health makes available for programs the Director determines acceptable.

The act repeals law that required the Director to make financial assistance available for acceptable county tuberculosis programs and eliminates such programs from the entities that may be designated as a county or district tuberculosis control unit.

The law repealed by the act regarding financial assistance for acceptable county tuberculosis programs required the Director of Health to make annual payments to boards of county commissioners on a per-active-case basis. The annual payment to a county was to equal the funds appropriated for this purpose divided by the number of the county's active cases, as determined by the Director, for which a course of treatment the Director determined was appropriate was completed the previous fiscal year.¹¹⁰

Detention of persons with tuberculosis

A person with tuberculosis is subject to public health requirements, including a requirement that the person complete an entire treatment regimen that must include a course of antituberculosis medication. If the individual fails to take the medication, a county or district tuberculosis control unit must establish a procedure under which the person is required to be witnessed ingesting the medication by individuals the control unit designates. The control unit has the authority to issue an order compelling a person to comply with the public health requirements and to seek an injunction if the order is violated. If the person fails to comply with the injunction, the control unit may request that a probate court issue an order granting the control unit the authority to detain the person in a hospital or other place for examination and treatment. A control unit also has authority to issue an emergency detention order when the unit has reasonable grounds to believe that a person who has, or is suspected of having, tuberculosis poses a substantial danger to the health of other persons.

The act repeals a law that permitted a board of county commissioners to apply to the Director of Health for reimbursement of expenses of detaining

¹¹⁰ *To justify the payments, the Director or Director's authorized agent, on request, had to be allowed access to a patient's medical records to verify the accuracy of information submitted as part of the process of receiving the payments. The payments had to be denied if access to the medical records was denied or the records were unavailable.*

indigent persons with tuberculosis and required that the Director reimburse a board for the cost of detaining such indigents. Total payment could not exceed the amount of funds appropriated for the cost of detention. Amounts appropriated for detention unexpended by the end of a fiscal year were to be disbursed to boards of county commissioners for tuberculosis programs.

Administration and implementation of the "Choose Life" Fund

(R.C. 3701.65)

Under law recently enacted by Sub. S.B. 156 of the 125th General Assembly, a person may apply to the Registrar of Motor Vehicles for the issuance of "Choose Life" license plates. For each application for registration and renewal the Registrar receives for these plates, the Registrar must collect a contribution of \$20 and transmit it to the Treasurer of State for deposit in the "Choose Life" Fund. Money in the Fund is to be annually distributed by the Director of Health to any eligible private, nonprofit organization that completes an application form developed by the Director and is selected for funding.

The act requires the Director of Health to adopt rules to implement the "Choose Life" Fund. It also provides that it is not the General Assembly's intent that the Department of Health create a new position to implement and administer the "Choose Life" Fund but that it use existing personnel.

Certificate of Need moratorium on long-term care beds

(R.C. 3702.141, 3702.51, and 3702.68; Sections 403.23 and 403.24)

Continuing law prohibits building or expanding the capacity of a long-term care facility without a certificate of need (CON) issued by the Director of Health. The Director is prohibited from accepting an application for a CON to recategorize hospital beds as skilled nursing beds.

The act continues, until July 1, 2007, a provision scheduled to expire July 1, 2005, prohibiting the Director from accepting for review a CON application for any of the following purposes:

(1) Approval of beds in a new health care facility or an increase in beds in an existing health care facility, if the beds are proposed to be licensed as nursing home beds;

(2) Approval of beds in a new county home or county nursing home, or an increase of beds in an existing county home or county nursing home, if the beds are proposed to be certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;



(3) An increase of hospital beds registered as long-term care beds or skilled nursing facility beds or recategorization of hospital beds that would result in an increase of beds registered as long-term care beds or skilled nursing facility beds.

In the case of (1) and (2), above, the act specifies that a facility is "existing" if it is licensed or has beds registered with the Department of Health as skilled nursing beds or long-term care beds and has provided services for at least 365 consecutive days within the 24-months immediately preceding the date a CON application is filed with the Director.

Continued review of CON applications during the moratorium

During the moratorium under law largely retained by the act, the Director is required to accept for review a CON application for nursing home beds in a health care facility, or skilled nursing facility beds or nursing facility beds in a county home or county nursing home, if the application concerns replacing or relocating existing beds within the same county. The Director also must accept for review an application seeking CON approval for existing beds located in an infirmary that is operated exclusively by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and was providing care exclusively to members of the religious order on January 1, 1994.

Under the act's continuation of the moratorium, the Director continues to be required to accept for review a CON application for approval of beds in a new facility or an increase in beds in an existing facility, if the proposed increase in beds is attributable solely to a replacement or relocation of existing beds in the same county. However, in the case of relocation of existing beds, the act specifies that the relocation must be from an existing facility. As described above, the act specifies that a facility is considered to be existing if it is licensed or has beds registered with the Department of Health as skilled nursing beds or long-term care beds and has provided services for at least 365 consecutive days within the 24-months immediately preceding the date the CON application is filed.

The act prohibits the Director from approving a CON application for addition of long-term care beds to an existing facility by relocation of beds or for the development of a new health care facility by relocation of beds unless all of the following conditions are met:

(1) The existing facility to which the beds are being relocated has no life safety code waivers, no state fire code violations, and no state building code violations;

(2) During the 60-month period preceding the filing of the application, no notice of proposed revocation of the facility's license was issued to the operator of the existing facility to which the beds are being relocated or to any health care facility owned or operated by the applicant or any principal participant in the same corporation or other business;

(3) Neither the existing facility to which the beds are being relocated nor any health care facility owned or operated by the applicant or any principal participant in the same corporation or other business has had a long-standing pattern of violations of the CON law or deficiencies that caused one or more residents physical, emotional, mental or psychosocial harm.

Religious order infirmary beds

The act also continues the requirement that CON applications pertaining to beds in an infirmary operated exclusively by certain religious orders be reviewed. The act specifies, however, that the applications to be reviewed are those for the conversion of infirmary beds to long-term care beds.

Physician Loan Repayment Program

(R.C. 3702.71)

Under continuing law, physicians providing primary care services in a primary care specialty may participate in the Physician Loan Repayment Program. Current law defines primary care services as professional comprehensive health services, which may include health education and disease prevention, treatment of uncomplicated health problems, diagnosis of chronic health problems, and overall management of health care services. Primary care specialties are defined as general internal medicine, pediatrics, obstetrics and gynecology, or family medicine. Physicians who participate in the program are required to provide primary care services in an underserved area of the state.

The act makes physicians with a specialty in psychiatry eligible to participate in the Physician Loan Repayment Program if the physician intends to provide primary care services in an underserved area.

J-1 Visa Waiver Program

(R.C. 3702.83)

Federal law requires a foreign-born person who wishes to pursue graduate medical education or training in the United States to obtain a J-1 Exchange Visitor Visa, or J-1 Visa. The J-1 Visa authorizes the person to enter the United States and remain until he or she has completed the graduate medical education or

training, but requires that the person return to his or her home country on completing the education or training and remain there for at least two years before returning to the United States. This requirement may be waived if the person agrees to serve as a physician for at least three years in an area of the country designated by the United States Secretary of Health and Human Services as a health professional shortage area.

Under the act, the Department of Health must administer, in accordance with the Immigration and Nationality Act, the J-1 Visa Waiver Program to recruit, for the purpose of providing health care services in underserved areas of the state, foreign-born physicians seeking to obtain J-1 Visa waivers. The Department must accept and review applications for placement of those seeking waivers and, for each application accepted, charge a non-refundable fee of \$3,571. Fees must be deposited with the State Treasurer and credited to the state's general operations fund.

Fee increase for birth certificates, death certificates, and divorce and dissolution of marriage decrees

(R.C. 3705.24 and 3705.242)

The Public Health Council is authorized by continuing law to adopt rules prescribing the fees that may be charged for various services provided by the state office of vital statistics, including fees for copies of birth and death records and fees for divorce and dissolution of marriage filings. In addition to the fees established by the Public Health Council, other fees may be charged for copies of these records, including fees charged by the local registrar or clerk of court, fees to modernize and automate the vital records system, and fees charged to benefit the Children's Trust Fund.

The act creates new fees for copies of vital records as follows:

- (1) \$1.50 for each certified copy of a birth certificate, certification of birth, or death certificate;
- (2) \$5.50 on the filing for a divorce or dissolution of marriage.

The Director of Health, the Director's designee, a local commissioner of health, or a local registrar of vital statistics may collect the fees. If the fee is collected locally, the local official may retain a portion of the fee to cover administrative costs.

The fees are to be used to fund the Family Violence Prevention Fund, which the act creates. The act authorizes the Director of Public Safety to use money in the Fund to provide grants to family violence shelters.



Hospice care facility inspection fee

(R.C. 3712.03; Ohio Administrative Code §3701-19-05)

Continuing law requires the Department of Health to inspect hospice care facilities as necessary to determine compliance with the hospice care law and rules adopted under it. An administrative rule requires the Department to inspect hospice care facilities at the following times:¹¹¹

- (1) Prior to issuing a license to operate a hospice care program;
- (2) At least once every three years, unannounced;
- (3) At any time the Director of Health considers an inspection necessary, including inspections in response to a complaint.

The act authorizes the Public Health Council to adopt rules establishing an inspection fee not to exceed \$1,750.

Nursing home and residential care facility licensing fees

(R.C. 3721.02)

The Department of Health licenses and inspects nursing homes and residential care facilities.¹¹² The fee for an application and annual renewal licensing and inspection is \$105 for each 50 persons in the home or facility's licensed capacity. The act increases the fee to \$170 for each 50 persons in the home or facility's licensed capacity.

¹¹¹ *The Department of Health is not required to conduct the pre-licensure inspection or unannounced inspection of hospice care programs that are accredited or certified by an entity whose standards equal or exceed those provided by Ohio's hospice care law (R.C. Chapter 3712.) (O.A.C. 3701-19-04 and 3701-19-05).*

¹¹² *A nursing home is a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A residential care facility is a home that provides either (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, limited skilled nursing care. (R.C. 3721.01.)*

Revocation of nursing home and residential care facility licenses

(R.C. 3721.03)

Grounds

Under continuing law, the Director of Health may issue an order revoking a license to operate a nursing home or residential care facility if the person, county home, or district home operating the nursing home or residential care facility has done any of the following:

- (1) Violated any provisions of the nursing home law or rules adopted by the Public Health Council;
- (2) Violated any order issued by the Director;
- (3) Is not, or any of its principals are not suitable, morally or financially, to operate the nursing home or residential care facility;
- (4) Is not furnishing humane, kind, and adequate treatment and care.

The act creates an additional ground for revocation. Under the act, a nursing home or residential care facility that has had a long-standing pattern of violations of the nursing home law or rules adopted under it causing physical, emotional, mental, or psychosocial harm to one or more residents may have its license revoked by order of the Director.

Prohibition on transfer of right to operate

The act provides that once the Director notifies a license holder that the license holder's license to operate a nursing home or residential care facility may be revoked, the license holder may not assign or transfer the right to operate to another person or entity. This prohibition remains in effect until administrative proceedings under Ohio's Administrative Procedure Act (R.C. Chapter 119.) are complete or until the Director notifies the person, county home, or district home that the prohibition has been lifted.

If a license is revoked, the former license holder is not permitted to assign or transfer or consent to assignment or transfer of the right to operate the home. Any attempted transfer or assignment to another person or entity is void.

Rejection of license application

(R.C. 3721.07)

Continuing law requires any person seeking to operate a nursing home or residential care facility to apply for a license to the Director of Health. The Director must issue licenses to qualified applicants. The Director may not issue licenses to the following individuals or entities:

(1) Applicants who have been convicted of a felony or a crime involving moral turpitude;

(2) Applicants who have violated any rules made by the Public Health Council or any orders issued by the Director.

The act additionally prohibits the Director from issuing licenses to the following individuals or entities:

(1) Any applicant whose license to operate was revoked because of any act or omission that jeopardized a resident's health, welfare, or safety;

(2) Any applicant whose license to operate was revoked because the applicant has a long-standing pattern of violations of nursing home law or rules that caused physical, emotional, mental, or psychosocial harm to one or more residents.

Religious nonmedical health care institutions: nurse aide training exemption

(R.C. 3721.21)

Under law modified by the act, a nursing home may not use individuals as nurse aides unless they have successfully completed a training and competency evaluation program approved by the Director of Health. A nurse aide is an individual who provides nursing and nursing-related services to residents in a nursing home, either as a member of the staff or as a volunteer.

The act exempts "religious nonmedical health care institutions" from the nurse aide training requirement. Specifically, it provides that the term "nurse aide" does not include an individual providing nursing and nursing-related services in a religious nonmedical health care institution, if the individual has been trained in the principles of nonmedical care and is recognized by the institution as being competent in the administration of care within the religious tenets practiced by the institution's residents.

For purposes of these provisions, the act defines a "religious nonmedical health care institution" as an institution that meets or exceeds the conditions to receive Medicare payments for inpatient hospital services or post-hospital extended care services furnished to an individual in such an institution. Under federal law, a "religious nonmedical health care institution" is defined primarily as an institution that provides only nonmedical nursing items and services exclusively to patients who choose to rely solely on a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs. In addition, the institution must (1) be tax-exempt, (2) be lawfully operated, (3) provide nonmedical items and services through experienced nonmedical nursing personnel on a 24-hour basis, (4) not be owned by or affiliated with a provider of medical treatment or services, (5) have in effect a utilization plan that meets specified requirements, (6) provide the U.S. Secretary of Health and Human Services with information as required, and (7) meet any other requirements the Secretary establishes.¹¹³

Elimination of Nursing Facility Regulatory Reform Task Force

(Section 490.06)

The act repeals an uncodified provision of Am. Sub. H.B. 95 of the 125th General Assembly (Section 147) requiring the Director of Health to request approval from the Secretary of the U.S. Department of Health and Human Services to develop an alternative regulatory procedure for nursing facilities. On receiving approval, the Director was to convene the Nursing Facility Regulatory Reform Task Force.

The Task Force was to review the effectiveness of regulatory procedures regarding the quality of care and quality of life of nursing facility residents, develop recommendations for improvements to the procedures, and evaluate the effect of various changes to nursing home law. It was to submit a report of its findings to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

Adult care facility inspection fees

(R.C. 3722.04)

Under prior law, the owner of an adult care facility¹¹⁴ was required to pay an inspection fee of \$10 per bed to the Director of Health when the facility's

¹¹³ 42 United States Code 1395x(ss)(1).

¹¹⁴ "Adult care facility" means any residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to

license is issued and each time it was renewed. The owner was required to submit the fee not later than 30 days after the issuance or renewal of a license, other than a temporary license.

Under the act, the owner is required to submit a fee of \$20 per bed not later than 30 days after each of the following:

- (1) Issuance or renewal of a license, other than a temporary license;
- (2) The unannounced inspection of a facility required under the adult care facility law;
- (3) Receipt of the report by the adult care facility of any investigation other than the two required under the adult care facility law if the facility was found to be in violation of that law.

Radiation control program fees for health care and radioactive waste facilities

(R.C. 3748.07 and 3748.13)

Continuing law requires the Director of Health to register and inspect sources of radiation. The act increases registration and inspection fees by approximately 9% as shown in the following chart.

Inspection or registration fee	Prior fee	New fee
Biennial registration	\$200	\$218
First dental x-ray tube	\$118	\$129
Each additional x-ray tube at a location	\$59	\$64
First medical x-ray tube	\$235	\$256
Each additional medical x-ray tube at a location	\$125	\$136
Each unit of ionizing radiation-generating equipment capable of operating at or above 250 kilovoltage peak	\$466	\$508
First nonionizing radiation-generating equipment of any kind	\$235	\$256

three to sixteen unrelated adults, at least three of whom are provided personal care services, but does not include facilities such as hospices and nursing homes that provide skilled nursing care (R.C. 3722.01).

Inspection or registration fee	Prior fee	New fee
Each additional nonionizing radiation-generating equipment at a location	\$125	\$136
Assembler-maintainer inspection	\$291	\$317
Inspection for unlicensed or unregistered facility without pending license or registration	\$363	\$395
Review of shielding plans or the adequacy of shielding	\$583	\$635

Program for Medically Handicapped Children

The Program for Medically Handicapped Children is in the Department of Health and is known as the Bureau for Children with Medical Handicaps (BCMh).

Removal of exemption for religious beliefs

(R.C. 3701.023)

Continuing law requires applicants for BCMh services to seek payment for medical expenses from all other third-party payers. This includes applying for Medicaid. Under prior law, if applying for Medicaid violated the religious beliefs of a medically handicapped child or the parent or guardian of a medically handicapped child, the child, parent, or guardian was not required to apply for Medicaid to receive BCMh services. The act removes this exemption.

BCMh eligibility

(Section 206.42.13)

A rule changing financial eligibility levels for BCMh went into effect October 13, 2003. The act requires the Public Health Council to revise the rule not later than December 1, 2005. As part of the revision, the Council is required to return the eligibility levels for fiscal years 2006 and 2007 to the levels in effect prior to October 13, 2003.

The act also requires the Department of Health, beginning July 1, 2005, to contact all persons who lost eligibility or their parents or guardians to inform them of revisions made to the eligibility rules.

Legislative Committee on the Future Funding of BCMH

(Section 206.42.12)

The act creates the Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps. The Committee is to examine issues involving BCMH operations, services, and funding and make recommendations to the Governor and members of the General Assembly. The act requires the Committee to do the following:

(1) Examine the current status of the Bureau and recommend best practices to be used in assisting working parents who have children with special health needs;

(2) Review all existing statutes and programs in Ohio pertaining to the Bureau;

(3) Review payment strategies in other states that facilitate adequate care for children with chronic conditions and support their families;

(4) Review all funding sources for the Bureau including funding received from county levies, the state General Revenue Fund and other state-based sources, the federal Maternal and Child Health block grant of Title V of the "Social Security Act";

(5) Request testimony from parents of children with special health needs and the child themselves and from health care professionals and other individuals who provide services to Bureau patients.

Membership. The Committee is to consist of the following individuals, who are not to be compensated:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, not more than two of whom may belong to the same political party as the Speaker;

(2) Three members of the Senate, appointed by the President of the Senate, not more than two of whom may belong to the same political party as the President;

(3) Six members of the general public, three appointed by the Speaker and three by the President, who suffer from a disease or disorder covered by BCMH, or family members of such individuals;

(4) The Director of Health, or the Director's designee;



- (5) The Superintendent of Insurance, or the Superintendent's designee;
- (6) The Director of Job and Family Services, or the Director's designee;
- (7) One person designated by the County Commissioners Association of Ohio;
- (8) One person designated by the Ohio Children's Hospital Association;
- (9) One person designated by the Ohio Association of Health Plans;
- (10) One person designated by the American Academy of Pediatrics;
- (11) One person designated by the Ohio Hospital Association;
- (12) One person designated by the Ohio Association of Health Commissioners;
- (13) One person designated by the Ohio Nurses Association.

Report. The act requires the Committee to submit a report, not later than December 31, 2006, including an analysis of the current system of services covered by BCMH and determinations and recommendations regarding how the state can best address the current and future needs of patients served by BCMH if necessary. The Committee is required to submit the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. The committee is to cease to exist on submitting the report.

Reimbursement of medical liability insurance premiums paid by free clinics

(R.C. 2305.2341)

The act creates the Medical Liability Insurance Program to reimburse "free clinics" for the premiums the clinics pay for medical liability insurance coverage for clinic's staff and volunteer health care professionals and health care workers. The coverage must be limited only to the diagnostic, treatment, and care activities of the clinic. The program reimburses the clinics from money appropriated from the General Revenue Fund for 80% of the premiums' costs, up to \$20,000. A free clinic must register with the Department of Health by January 31 of each year in order to participate and obtain reimbursement under the program. At the time of registration, the clinic must provide to the Department a statement of the number of volunteer and paid health care professionals who provide services at the clinic, a statement of the number of health care services rendered in a year, a signed form acknowledging that the clinic will follow its medical liability insurance policies,

and a copy of the medical liability insurance policy. The act defines "free clinic" to be any non-profit organization exempt from federal income taxation whose primary mission is to provide health care services for free or for a minimal administrative fee. The act places certain limitations on a clinic if the clinic elects to charge a minimal administrative fee.

OHIO HISTORICAL SOCIETY

- Requires the Ohio Historical Society to distribute money appropriated for grants or subsidies to other entities for site-related programs within 90 days of accepting a grant or subsidy application for the money and prohibits the Society, through June 30, 2007, from charging or retaining a fee for distributing the money to those entities.

Disbursement of funds by Ohio Historical Society

(R.C. 149.30; Section 206.51)

Continuing law authorizes the General Assembly to appropriate money to the Ohio Historical Society to carry out certain public functions. An appropriation by the General Assembly to the Society constitutes an offer to contract with the Society to carry out those functions for which appropriations are made. An acceptance by the Society of the appropriated funds constitutes an acceptance by the Society of that offer and is considered an agreement to perform those functions in accordance with the terms of the appropriation and the law and to expend the funds only for the purposes for which they have been appropriated.

Under law unchanged by the act, the Society must faithfully expend and apply all money received from the state to the uses and purposes directed by law and for necessary administrative expenses. The act specifies that if the General Assembly appropriates money to the Society for grants or subsidies to other entities for site-related programs of the other entities, the Society, except for good cause, must distribute the money within 90 days of accepting a grant or subsidy application for the money. Additionally, the act prohibits the Society, through June 30, 2007, from charging or retaining an administrative, service, or processing fee for distributing money that is appropriated for grants or subsidies to those entities.

DEPARTMENT OF INSURANCE

- Creates the School Employees Health Care Board, charged with designing life and medical insurance plans to be used by all persons employed by Ohio's public schools but delays the actual use of Board medical plans pending future action by the General Assembly.
- Requires health insuring corporations providing coverage to Medicaid patients to post a \$1million performance bond.
- Eliminates existing law provisions that exclude health insuring corporations covering Medicaid recipients from the statutes that otherwise require them to offer external reviews of denials of coverage.
- Removes the requirement that the Director of Health review an application to establish or operate a health insuring corporation (HMO) to ensure the HMO will meet specified minimum standards when the HMO is intended solely to provide services to Medicaid recipients and lengthens the period of time given the Superintendent of Insurance to issue or deny a certificate of authority to such an HMO.
- Eliminates an existing law provision that excludes health insuring corporations covering Medicaid recipients from the statutes that otherwise require them to make prompt payments.
- Requires additional moneys to be paid into the Department of Insurance Operating Fund; increases the fees the Superintendent of Insurance must charge; and eliminates the fee foreign insurance companies must pay for interest checks and coupons accruing on bonds and securities.
- Eliminates the exemption from the unauthorized foreign insurance tax for insurance companies that issue policies to "employer insureds."
- Exempts professional or medical liability insurance procured by hospitals from the unauthorized foreign insurance tax.
- Eliminates the requirement that a licensed insurance company or certified health insuring corporation notify the Superintendent when the insurer is disciplined in another state.

- Eliminates the requirement that authorized foreign insurers publish their annual certificates of compliance and the requirement that the Superintendent issue annual certificates of compliance to those insurers.
- Clarifies that a continuing tax on money received from the unauthorized conduct of the business of insurance in Ohio does not apply to captive insurers and defines "captive insurer" for this purpose.

School Employees Health Care Board

(R.C. 9.833, 9.90, 9.901, 3311.19, 3313.12, 3313.202, 3313.33, 4117.03, and 4117.08; Section 611.03)

The act creates a new board, the School Employees Health Care Board, to design medical plans to be used by all persons employed by Ohio's public schools. The Board, in consultation with the Superintendent of Insurance, is required to negotiate with insurers authorized to do business in this state, and in accordance with competitive selection procedures, contract for plans meeting the Board's designs. Any or all of the plans may be self-insured if the plans are administered by the Board. For this purpose, a "public school" means a school in a city, local, exempted village, or joint vocational school district, and the educational service centers associated with those schools. The act's requirement for public school employees to use Board medical plans and the act's grant of administrative authority to the Board, including the authority to solicit bids for coverage from private companies and to contract for services with state agencies other than the Department of Administrative Services, do not take effect unless and until the General Assembly enacts legislation at a future date to confirm these provisions and order their implementation.

The Board consists of nine members, including individuals with experience with public school benefit programs, health care industry providers, and medical plan beneficiaries. The Governor, the Speaker of the House of Representatives, and the President of the Senate each are to appoint three members within 45 days after the section's effective date. Board members may not be employed by, represent, or otherwise be affiliated with any private entity providing services to the Board, employers, or employees. The act also creates an advisory committee serving under the Board.

The act provides that members of the School Employees Health Care Board are to serve four-year terms. It contains fairly common provisions governing staggered initial appointments, service until successor is appointed, filling of

vacancies, uncompensated service of Board members and reimbursement for actual and necessary expenses, the initial meeting called by the Governor, election of a chairperson, minimum meetings (4) per year, and notice of meeting, applicability of the Open Meetings and Public Records Laws, what constitutes a quorum, and removal of a member for misconduct.

The School Employees Health Care Board must: (1) design multiple medical plans to provide an optimal combination of coverage, cost, choice, and stability, (2) include both state and regional preferred provider plans, (3) set goals for the employer and employee contributions to the premium cost, in order to encourage use of the plans, (4) set employee co-payments, deductibles, exclusions, limitations, formularies, and other responsibilities, (5) utilize cost-containment measures, and (6) annually create and distribute to the Governor, the Speaker of the House of Representatives, and the President of the Senate, a report covering the plan's background, coverage options, plan administration and operations, employee and employer contribution rates, the relationship between the rates and the School Employees Health Care Fund's balance, alternative employee and employer cost-sharing strategies, an evaluation of the effectiveness of cost-saving programs and efforts to control and manage member eligibility, and on efforts to prevent and detect fraud and to manage and monitor Board contracts. Prior to the release of the Board's initial medical plans, the Board must contract with an independent consultant for an analysis of the costs of existing school district medical plans and the methods those plans use to control costs. The consultant must submit written recommendations to the Board concerning the establishment of regional plans and the use of alternative medical plans, the use of stop-loss insurance, mandatory and optional medical coverage, the development of systems to obtain eligibility data and data compiled under federal law, and for the transition from district medical plans to Board plans, must report on the experience of states with similar medical plans and the potential impact and risks of Board medical plans, and must submit any legislative recommendations by December 31, 2005, to the Board, the Governor, the Speaker of the House of Representatives, and the President of the Senate.

School districts offering employee health care benefits through consortiums of two or more districts, or consortiums of one or more districts and one or more political subdivisions or their agencies or instrumentalities, covering 5,000 or more employees as of January 1, 2005, may request permission from the School Employees Health Care Board to continue the use of the plans. The Board is required to grant its initial or continued approval based on an actuarial evaluation of the consortium's existing plan offerings, if the evaluation determines the consortium plans' benefits and costs are equivalent to or better than the Board's plans. Initial approval is for one year; approval each year thereafter requires annual re-application to and approval by the Board. The Board is to be given

access to all relevant information prior to making its decision. Once a school district chooses to offer the Board's plans the district is thereafter prohibited from offering the consortium's plans. Members of a school district's board of education may obtain coverage under the plans, but are required to pay all of the premiums for that coverage if they elect to participate.

The act authorizes the School Employees Health Care Board to contract with other state agencies as necessary to implement and operate the Board's medical plans, and requires it to contract with the Department of Administrative Services for central services until the Board is able to obtain the services from other sources. The Board must reimburse the Department of Administrative Services for those services. The Board's administrative duties include maintaining funds in the School Employees Health Care Fund (below) to provide for the long-term stability and solvency of the plans designed by the Board, to provide appropriate health care information and preventative care programs, and to coordinate contracts for services related to the Board's medical plans. A school district's board of education is responsible for distributing detailed information about the Board's plans to the district's employees a minimum of 90 days prior to the start of employee coverage. The provisions outlined in this paragraph, with the exception of those pertaining to the Board's work with the Department of Administrative Services, are not effective unless and until the General Assembly enacts subsequent legislation confirming the provisions and ordering their implementation.

The act also creates the School Employees Health Care Fund in the state treasury. Contingent upon future legislative action by the General Assembly, participating schools will pay all employer and employee premiums for Board-designed plans to the School Employees Health Care Board for deposit into this fund. Money in the Fund only may be used for the provision of medical benefits to public school employees and related expenses. The state is not liable for any obligations of the Fund or the Board, or for expenses of public schools and school districts related to Board medical plans.

School district employees may continue to bargain collectively with regard to medical benefits, however, after the act takes effect, those benefits must be obtained through the Board-designed medical plans. The employees may choose from any of the plans agreed to during collective bargaining. Employees may agree during collective bargaining to pay a higher percentage of the premium than would otherwise be required under the Board plan. A collective bargaining agreement may allow employees to contribute a lesser percentage of the premium than set by the Board if the district remains in compliance with the Board's aggregate goals.

The act also requires the Department of Administrative Services to report to the Governor, the Speaker of the House of Representatives, and the President of the Senate within 18 months after the act's effective date on the feasibility of setting up a similar program for public institutions of higher education.

Medicaid health insuring corporations to post performance bond

(R.C. 1751.03, 1751.271, 3903.14, 3903.42, and 3903.421)

The act requires each health insuring corporation providing coverage to Medicaid recipients to post a performance bond in the amount of \$3 million, as security to fulfill the health insuring corporation's obligations to its contracted providers for covered services rendered to Medicaid recipients in the event of liquidation or rehabilitation proceedings. The bond is payable to the Department of Insurance in the event that the health insuring corporation is placed in rehabilitation or liquidation proceedings. In lieu of a performance bond, the act permits a Medicaid health insuring corporation to deposit securities that are acceptable to the Superintendent of Insurance in the amount of \$3 million, with the Superintendent; the health insuring corporation is entitled to the interest on these securities as long as the health insuring corporation remains solvent. The bond or securities become a special deposit upon the start of the delinquency proceedings and are subject to distribution under the Insurer's Supervision, Rehabilitation, and Liquidation Law.

The act requires that the performance bond be issued by a surety company licensed with the Department. The bond or deposit, or any replacement bond or deposit, must be in a form acceptable to the Superintendent and must remain in effect for the duration of the health insuring corporation's license and thereafter until all claims against the Medicaid health insuring corporation have been paid in full. Documentation of the bond must be filed with the Superintendent prior to the issuance of a Medicaid health insuring corporation's certificate of authority. Annually thereafter, 30 days prior to the renewal of the health insuring corporation's certificate of authority, health insuring corporations must furnish the Superintendent with evidence that the required bond remains in effect.

Under the act, a rehabilitation plan for a Medicaid health insuring corporation may include the use of the proceeds of the performance bond or securities first to pay the claims of the health insuring corporation's contracted providers for services rendered. Contracted providers with claims against the health insuring corporation are given first priority under the act against the proceeds of the bond or securities, to the exclusion of other creditors. If the amount of the proceeds are not sufficient to satisfy all of the allowed claims of contracted providers for services rendered to Medicaid recipients, the contracted providers are to share in the proceeds pro rata, then any unpaid balance of

contracted providers' claims are to be allowed for payment from the general assets of the estate consistent with the priorities as listed in the Law. If the amount of the proceeds exceeds the allowed claims of the contracted providers for services rendered to Medicaid recipients, however, the excess amount becomes a general asset of the health insuring corporation's estate, to be distributed to other claimants pursuant to the listed priorities.

Certificate of authority to establish or operate a health insuring corporation

(R.C. 1751.04 and 1751.05)

The act excepts health insuring corporations (HMOs) that cover solely Medicaid recipients from a provision of continuing law that requires the Director of Health to review all HMO applications and accompanying documents and make findings as to whether the applicant for a certificate of authority has fulfilled certain requirements with respect to any basic health care services and supplemental health care services to be furnished by the applicant. Under continuing law, the Superintendent of Insurance generally has 45 days to issue or deny a certificate of authority to establish or operate an HMO. The act, however, lengthens this time to 135 days for an HMO that covers solely Medicaid recipients.

Prompt payment requirements for health insuring corporations covering Medicaid recipients

(R.C. 3901.3814 and 5101.93)

Under prior law, health insuring corporation plans providing coverage to Medicaid recipients were exempt from statutes that would otherwise have required them to comply with prompt payment laws applicable to other health insuring corporation plans. The act eliminates the general exclusion.

The act requires the Department of Job and Family Services to determine whether a waiver of federal Medicaid requirements is necessary to apply the prompt payment laws to health insuring corporation plans covering Medicaid recipients. If a waiver is necessary, the Director of Job and Family Services is required to apply to the U.S. Secretary of Health and Human Services for the waiver.

If the Director determines a waiver is unnecessary or receives approval of the waiver, the Department is required to notify the Department of Insurance so that the prompt payment requirements can be applied to health insuring corporation Medicaid plans. The act provides that implementation must be

effective 18 months after the Department of Insurance receives notice from the Department of Job and Family Services.

The act also requires the Department of Job and Family Services to give notice to each health insurance corporation providing coverage to Medicaid recipients of the applicability of the prompt payment requirements and their implementation date, at the time that the Department notifies the Department of Insurance.

Additional moneys for the Department of Insurance Operating Fund and fee increases

(R.C. 3901.021 and 3905.40)

Under prior law, three-fourths of the fees collected for issuing certificates of compliance and copies of those certificates, along with other types of fees, was credited to the Department of Insurance Operating Fund. The remaining one-fourth was credited to the General Revenue Fund.

The act requires seven-tenths of the fees collected for issuing certificates of compliance and copies of those certificates, filing each "statement," and issuing each certificate of authority or license and copies of those certificates or licenses be credited to the Operating Fund. The act requires the remaining three-tenths be credited to the General Revenue Fund. The act also requires other revenues collected by the Superintendent, such as registration fees for seminars or conferences and grants from private entities, be credited to the Operating Fund.

The act increases the fees for all of the following:

- (1) For filing each "statement," from \$25 to \$175;
- (2) For issuing each certificate of authority or license, from \$5 to \$175;
- (3) For issuing certificates of compliance or certified copies of the certificates, from \$20 to \$60.

The act eliminates the law's former requirement that a foreign insurance company doing business in the state pay for forwarding interest checks and coupons accruing upon bonds and securities.

Exemption for "employer insureds" from the unauthorized foreign insurance tax

(R.C. 3901.17 and 3905.36)

Law largely unchanged by the act imposes a tax on out-of-state insurers and other persons engaged in the business of insurance that are not authorized to do business in Ohio, if the insurer, its affiliate, or agent takes any of a number of listed actions in Ohio, by mail or otherwise any of which are considered to be the conduct of an insurance business in Ohio and subject the party taking the action to Ohio jurisdiction to the extent permitted by the state and federal constitutions. This tax, however, has several exemptions. One exemption was for contracts of insurance issued to an "employer insured," defined as an insured with at least 25 full-time employees and annual aggregate insurance premiums of at least \$25,000, that procures insurance by the use of a full-time employee acting as an insurance manager or buyer or by the use of a continuously qualified insurance consultant. The act ends this exemption.

Additionally ongoing Insurance Law requires an Ohio insured that obtains insurance providing coverage in Ohio from an unauthorized foreign insurer, annually to return a statement, under oath, to the Superintendent of Insurance, providing specified information on the insurance coverage and on premiums and other consideration paid for the insurance in the preceding 12 months and to pay a 5% tax on premiums. Under prior law, insureds were not required to report or pay tax on insurance obtained from surplus lines brokers or issued to employer insureds. The act ends these exemptions, but adds an exemption for professional and medical liability insurance procured by a hospital licensed by the Department of Health.

Exemption for professional or medical liability insurance from the unauthorized foreign insurance tax

(R.C. 3905.36)

As explained above under **Exemption for "employer insureds" from the unauthorized foreign insurance tax**," continuing law imposes a 5% tax on insurance premiums collected by all out-of-state insurers and other persons engaged in the business of insurance that are not authorized to conduct business in Ohio. The act adds an exemption from this tax for professional or medical liability insurance procured by hospitals organized under Ohio law. The act does not define professional or medical liability insurance.

Insurer's notification to Superintendent of Insurance concerning out-of-state discipline

(R.C. 3901.41)

Under prior law, a licensed insurance company or certified health insuring corporation was required to notify the Superintendent of Insurance within 30 days after being disciplined in another state in one of the following manners: (1) suspension or revocation of the right to transact business in the state, (2) receipt of an order to show cause why the insurer's license should not be suspended or revoked, or (3) penalized for violating the insurance laws of the state. If the Superintendent had knowledge that an insurer failed to provide the above notice, the Superintendent was authorized to order a hearing and require the insurer to show cause why the Superintendent should not suspend or revoke the insurer's right to transact business in this state or impose a monetary fine. The act eliminates the above provisions.

Certificates of compliance for authorized foreign insurers

(R.C. 3901.78; R.C. 3901.781, 3901.782, 3901.783, and 3901.784 (repealed))

Under prior law, each insurance company authorized to do business in this state but not incorporated under the laws of this state was required to publish its annual certificate of compliance, which was issued by the Superintendent of Insurance. The insurance company or an association of insurers was required to publish the certificate in a newspaper of general circulation in each county where the company or association had an agency. The act eliminates the publication requirement and the requirement that the Superintendent issue annual certificates of compliance to these foreign insurers. The Superintendent may continue to issue certificates of compliance upon request or in any other circumstance the Superintendent determines to be appropriate.

Captive insurers exemption--tax on the unauthorized conduct of the business of insurance

(R.C. 3901.17 and 3905.36)

Continuing law levies a 5% tax on all premiums, fees, assessments, dues, and other consideration received by insurers, associations, and companies engaged, directly or indirectly, in the unauthorized conduct of the business of insurance in Ohio. The law does not apply to specified transactions and forms of insurance, but its application to transactions involving policies issued by a captive insurer was unclear. The act specifies that the law does not apply to transactions involving policies issued by captive insurers. Captive insurers are defined by the

act as insurers owned and operated by one or more individuals, organizations, groups, or associations exclusively to self-insure risks of one or more affiliates of the parent organizations or individual owners or affiliates thereof, or the members of a group or association and its affiliates, and foreign insurers, licensed and operated in accordance with the captive insurance laws of their jurisdiction of domicile.

DEPARTMENT OF JOB AND FAMILY SERVICES

I. General

- Creates two new funds in the state treasury: the Support Services Federal Operating Fund and the Support Services State Operating Fund.
- Provides for money in the funds to be used to pay the costs of Ohio Department of Job and Family Services (ODJFS) for computer projects and the operating costs of the parts of ODJFS that provide general support services for ODJFS.
- Eliminates the provision of state law governing fiscal agreements between ODJFS and boards of county commissioners that concern consolidated funding allocations.
- Authorizes ODJFS to increase, without having to provide notice to a county and an opportunity for an administrative review, a county's share of public assistance expenditures if the federal government requires an increase in the state's Temporary Assistance for Needy Families (TANF) maintenance of effort because of one or more county family services agencies' failure to meet a federal TANF requirement.
- Authorizes ODJFS to make the increase even if it results in a county having to pay more for public assistance expenditures than the cap established by continuing law permits.
- Authorizes ODJFS to recover excess payments made to county departments of job and family services, public children services agencies, and child support enforcement agencies without following continuing law that governs the Department's actions against such agencies.
- Specifically authorizes the Director of ODJFS to redetermine eligibility for certain programs administered by ODJFS.

- Includes as programs for which the Director of ODJFS may accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities the Food Stamp program and other programs the Director determines will achieve administrative cost saving and efficiency through ODJFS's performance of those functions.
- Specifies that the Director of ODJFS may not conduct face-to-face interviews for certain public assistance programs if federal law requires a face-to-face interview to complete an eligibility determination for the program.
- Requires that ODJFS, the Rehabilitation Services Commission, county departments of job and family services, and other state and local government entities actively engaged in providing services for which disability is an eligibility requirement conduct a study that considers the feasibility of an interagency agreement among such state and local government entities whereby one of the entities performs disability determinations for those services.
- Requires ODJFS, no later than March 1 of each year, to create a list of the 25 drugs most often dispensed to Ohio's Best Rx Program participants and determine the average percentage savings in the amount terminal distributors charge participants for each drug included on the list.
- For FY 2006 and FY 2007, grants the Director of ODJFS certain powers under the Civil Service Law, and provides that the actions taken by the Director pursuant to this temporary grant of authority may not be appealed to the State Personnel Board of Review.

II. Workforce Development

- Authorizes an additional action that ODJFS may take to enforce compliance with workforce development agreements and modifies the process used to review compliance actions.
- Specifies in Ohio law the Governor's authority to decertify a local workforce investment board and the reasons for which the Governor may decertify a board, as already provided in federal law.
- Allows the Governor to declare an emergency if the Governor finds that access to basic federal "Workforce Investment Act" (WIA) services is not

provided and to consult with chief elected officials in a local area to arrange for an alternative entity to temporarily provide WIA services.

III. Child Care

- Requires that reimbursement ceilings for providers of publicly funded child care be increased, in fiscal years 2006 and 2007, to 65% of the market's usual and customary cost to the public based on the most recently conducted market rate survey required by federal regulations.
- Permits ODJFS to increase for FY 2007 the reimbursement ceilings for providers of publicly funded child care to not more than 70% of the market's usual and customary cost to the public if the estimated monthly average of children expected to enroll in publicly funded child care from December 2005 through March 2006 exceeds the actual number enrolled by at least 2,000.
- Requires ODJFS to conduct a study of the market rates for the provision of child care and establish new reimbursement rates by July 1, 2006.
- Requires child care providers to cooperate in the study.

IV. Child Support Enforcement

- When a lump sum of \$150 or more is due a child support obligor who is in arrears, authorizes issuance of an order requiring a portion of the lump sum be transmitted to the Office of Child Support that is sufficient to pay the arrearage in full, rather than the entire lump sum.
- Replaces a provision directing how the Office of Child Support must distribute the lump sum with a requirement that the Office distribute it in accordance with administrative rules.
- Permits the Office of Child Support to distribute child support amounts by means of electronic disbursement and requires a person receiving the child support to accept payment by electronic means.
- Creates in the state treasury a state special revenue fund, the Child Support Operating Fund, that will contain a portion of certain federal moneys related to child support enforcement and may be used by ODJFS for program and administrative purposes associated with ODJFS's program of child support enforcement.

- Authorizes ODJFS to retain \$1.5 million of certain federal incentives received to reimburse ODJFS for the state share of payments it makes for mandatory contracts used by county child support enforcement agencies (CSEAs) for child support enforcement.
- Based on actual usage of optional contracts by each county, authorizes ODJFS to retain a portion of certain federal incentives that are paid to CSEAs to reimburse ODJFS for the state share of the contractual obligation for the monthly use of optional contracts by each agency for child support enforcement.

V. Child Welfare and Adoption

- Eliminates the requirement that a court prepare and send to ODJFS a summary of each proceeding for the adoption of a minor and the requirement that ODJFS annually report on the assembled results compiled from these summaries.

VI. Title IV-A Temporary Assistance for Needy Families

- Permits ODJFS to establish and administer the Employment Retention Incentive Program in fiscal year 2007 using funds available under the TANF block grant.
- Creates the Title IV-A Demonstration Program under which ODJFS may provide funding to government agencies and not-for-profit entities administering a project designed to meet one of the four purposes of the TANF block grant.
- Creates the Kinship Permanency Incentive Program under which an initial one-time incentive payment and possible additional incentive payments are to be provided out of the TANF Block Grant to a kinship caregiver to help care for a child in the place of the child's parents.
- Provides that an assistance group meets the first step in determining income eligibility for Ohio Works First if the assistance group's gross income does not exceed the higher of 50% of the federal poverty guidelines or the gross income maximum.
- Authorizes ODJFS to provide (1) additional incentives to teens participating in the Learning, Earning, and Parenting (LEAP) Program who attend an educational program designed to lead to a high school

diploma or its equivalent and (2) an award to an individual who has successfully completed the LEAP Program and enrolls in post-secondary education.

VII. Medicaid

- Requires that ODJFS seek federal approval to reduce to 90% of the federal poverty guidelines the family income the parent of a child under age 19 may have and remain eligible for Medicaid.
- Places in the Revised Code the administrative rule that specifies when a home becomes a countable resource for purposes of determining an aged, blind, or disabled individual's eligibility for Medicaid when the individual is institutionalized, but extends from six months to thirteen months the period of time during which the home is not a countable resource.
- Requires that ODJFS apply for a federal Medicaid waiver to expand to five years the look-back period for determining whether any assets, not just assets in a trust, have been transferred for less than fair market value.
- Creates the offense of Medicaid eligibility fraud, prohibits making false or misleading statements, concealing an interest in property, or failing to disclose certain transfers of property in an application for Medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive Medicaid benefits.
- Authorizes the Attorney General and the prosecuting attorney to bring a civil action for the recovery of Medicaid benefits improperly paid as a result of Medicaid eligibility fraud.
- Revises state law governing Medicaid estate recovery and liens to make it consistent with federal law.
- Expands the Medicaid Estate Recovery Program to include any real and personal property and other assets in which an individual subject to recovery has any legal title or interest at the time of death, including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

- Repeals a law that permitted ODJFS to enter into a contract with any person under which the person administered the Medicaid Estate Recovery Program on ODJFS's behalf or performed any of the functions required to carry out the program and instead requires that ODJFS certify amounts due under the Medicaid Estate Recovery Program to the Attorney General pursuant to continuing law that authorizes the Attorney General to collect debts owed the state.
- Requires that a person responsible for the estate of certain deceased Medicaid recipients submit a properly completed Medicaid estate recovery reporting form to the Administrator of the Medicaid Estate Recovery Program.
- Requires that the Medicaid estate recovery reporting form list all of the decedent's real and personal property and other assets that are part of the decedent's estate subject to the Medicaid Estate Recovery Program.
- Requires that ODJFS institute a Medicaid co-payment program for dental services, vision services, nonemergency emergency department services, and prescription drugs (other than generic drugs).
- Permits a provider to consider an unpaid co-payment an outstanding debt and refuse service to the Medicaid recipient who owes the debt to the provider.
- Requires that the Medicaid program cover dental services for fiscal years 2006 and 2007.
- Provides that, for Medicaid recipients age 21 or older, the dental coverage is to be less in amount, duration, and scope than the coverage provided immediately before the effective date of this provision of the act and explicitly states that the act does not limit ODJFS's ability to adopt, amend, or rescind rules applicable to dental coverage for Medicaid recipients under age 21 that limit or reduce coverage, reduce reimbursement levels, or subject covered services to co-payments.
- Requires that the Medicaid program cover vision services in fiscal years 2006 and 2007, but explicitly states that the act does not limit ODJFS's ability to adopt, amend, or rescind rules applicable to vision coverage, including rules that limit or reduce services, reduce reimbursement levels, or subject covered services to co-payments.

- Prohibits the Medicaid program from providing reimbursement for prescription drugs for treatment of erectile dysfunction.
- Eliminates a requirement that any drug product used to treat mental illness, HIV, or AIDS be exempted from the Medicaid program's Supplemental Drug Rebate Program.
- Permits ODJFS to receive a supplemental rebate negotiated under the Supplemental Drug Rebate Program for a drug dispensed to a Medicaid recipient pursuant to a prescription or for a drug purchased by a Medicaid provider for administration to a Medicaid recipient in the provider's primary place of business.
- Permits ODJFS to enter into or administer an agreement or cooperative arrangement with other states to create or join a multiple-state drug purchasing program.
- Requires that ODJFS establish a State Maximum Allowable Cost Program for purposes of managing reimbursement for certain prescription drugs available under Medicaid.
- Permits ODJFS to establish an e-prescribing system under which certain Medicaid providers must use an electronic system when prescribing a drug for a Medicaid recipient.
- Extends the deadline for ODJFS to seek federal approval to provide assertive community treatment and intensive home-based mental health services under the Medicaid program from July 21, 2004, to July 21, 2006.
- Requires that ODJFS and the Departments of Mental Health and Alcohol and Drug Addiction Services, in conjunction with behavioral health providers and county boards of alcohol, drug addiction, and mental health services, specify procedures consistent with federal law for the implementation of the *State of Ohio Community Behavioral Health Medicaid Business Plan*.
- Revises state law governing the Medicaid reimbursement methodology and procedures for nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR).

- Establishes the Nursing Facility Rate Transition Advisory Council to develop recommendations on how to phase in the new Medicaid reimbursement methodology for nursing facilities.
- Provides that an ICF/MR's Medicaid provider agreement does not have to include beds that are designated for respite care under a Medicaid waiver program.
- Permits the operator of a nursing facility or ICF/MR to enter into provider agreements for more than one facility.
- Increases the nursing home franchise permit fee to \$6.25 per bed per day for fiscal years 2006 and 2007.
- Revises the law governing how money in the Nursing Facility Stabilization Fund is to be used.
- Permits ODJFS to withhold a Medicaid payment or terminate a Medicaid provider agreement if a facility subject to the nursing home franchise permit fee fails to pay the fee when due.
- Eliminates the exemption from the nursing home franchise permit fee available to certain facilities because of a federal Medicaid waiver.
- Exempts a nursing home maintained and operated by the Ohio Veteran's Home Agency from the nursing home franchise permit fee.
- Provides that the amount of the ICF/MR franchise permit fee for fiscal years 2006 and 2007 is the same as in fiscal year 2005 (\$9.63 per bed per day).
- Permits ODJFS to withhold a Medicaid payment or terminate a Medicaid provider agreement if an ICF/MR fails to pay the franchise permit fee when due.
- Abolishes the Nursing Facility Reimbursement Study Council.
- Provides that the Ohio Veteran's Home Agency is not required to qualify in the Medicare program all of the Medicaid-certified beds in a nursing facility that agency maintains and operates.

- Establishes requirements for nursing facilities and ICFs/MR that undergo a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation in the Medicaid program.
- Requires ODJFS, beginning October 1, 2007, to prepare an annual report for the General Assembly on the Medicaid care management system and ODJFS's ability to implement its various components.
- Creates the Medicaid Care Management Working Group to develop guidelines for ODJFS to consider when entering into contracts with Medicaid managed care organizations.
- Requires a hospital participating in the Medicaid program but not under contract with a Medicaid managed care organization to provide services to a care management system participant who is enrolled in a managed care organization when the participant is referred to the hospital and requires the noncontracting hospital to accept from the organization, as payment in full, the amount derived from using Medicaid's fee-for-service reimbursement rate.
- Exempts a hospital from the requirement to accept referrals of mandatory managed care Medicaid recipients if the hospital (1) is located in a county in which Medicaid recipients are required to be enrolled in a health insuring corporation before January 1, 2006, (2) has entered into a contract before January 1, 2006, with at least one Medicaid health insuring corporation, and (3) remains under contract with at least one Medicaid health insuring corporation.
- Requires all Medicaid recipients in the category ODJFS identifies as "covered families and children" (other than such recipients included in one or more of the groups exempt under federal law) to be designated by January 1, 2006, for mandatory participation in the Medicaid care management system, and to be enrolled in health insuring corporations by December 31, 2006.
- Requires that ODJFS designate as care management participants all persons who receive Medicaid on the basis of being aged, blind, or disabled, excluding (1) persons under age 21, (2) institutionalized persons, (3) persons eligible for Medicaid by spending down income, (4) persons dually eligible for Medicaid and Medicare, and (5) persons to the extent they are receiving Medicaid services through a waiver program.

- Exempts alcohol, drug addiction, and mental health services from the Medicaid care management system when the nonfederal share of the cost of the services is provided by a board of alcohol, drug addiction, and mental health services or a state agency other than ODJFS.
- Would have required ODJFS to create a care management pilot program for chronically ill children in at least three counties under which the children were to receive coordinated health care services through a "medical home" approach (VETOED).
- Repeals a law that excludes health insuring corporations covering Medicaid recipients from the statutes that otherwise require them to make prompt payments.
- Requires that ODJFS, when it contracts with a health insuring corporation under the Medicaid care management system, to require the health insuring corporation to provide a grievance process for Medicaid recipients in accordance with federal regulations.
- Requires that ODJFS develop and implement a financial incentive program to improve and reward positive health outcomes through its Medicaid managed care contracts.
- Would have required, for fiscal years 2006 and 2007, Medicaid health insuring corporations to cover prescription drugs that protect against respiratory syncytial virus for Medicaid recipients who, as an infant born premature or other pediatric patient, are at risk for the respiratory syncytial virus (VETOED).
- Requires that a health insuring corporation (HIC) under contract with Medicaid pay ODJFS a quarterly franchise permit fee from January 1, 2006, to July 1, 2007, to be used to pay for Medicaid services, administrative costs, and Medicaid contracts with HICs.
- Provides for the fee to be 4.5% of the Medicaid HIC's quarterly managed care premiums, unless (1) ODJFS adopts rules decreasing the percentage or increasing it to not more than 6% or (2) the fee is reduced or terminated to comply with federal law or because the fee does not qualify for matching federal funds.

- Permits ODJFS to take disciplinary actions against a Medicaid HIC for failing to pay the fee or failing to cooperate in an audit.
- Allows ODJFS to deny Medicaid payments to a hospital for direct graduate medical education costs if the hospital refuses without good cause to contract with a managed care organization that serves Medicaid recipients in the hospital's area who are required to be enrolled in a managed care organization, with an exception applicable to certain hospitals under contract with at least one Medicaid-contracting health insuring corporation before January 1, 2006.
- Requires that ODJFS implement, if federally approved, a program for making supplemental Medicaid payments to children's hospitals for qualifying inpatient services occurring in fiscal years 2006 and 2007.
- Establishes requirements for Medicaid-funded home and community-based services provided under a waiver that are an alternative to services provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded.
- Requires ODJFS and other state agencies and political subdivisions administering a program under which home and community-based services are provided under a waiver to maintain financial records documenting the costs of services provided under the waiver and make the records available to the United States Secretary of Health and Human Services and United States Comptroller General.
- Provides that ODJFS and other state agencies and political subdivisions are financially accountable for funds expended for services provided under a home and community-based services waiver.
- Requires state agencies and political subdivisions that contract with ODJFS to administer a program under which home and community-based services are provided under a waiver to provide ODJFS a written assurance that the agency or subdivision will not violate state law that establishes requirements for the waiver.
- Authorizes ODJFS to seek two or more Medicaid waivers under which home and community-based services are provided to individuals who need the level of care provided by a nursing facility or hospital and requires that ODJFS administer the waivers.

- Permits ODJFS, after the first of any of the new Medicaid waivers begins to enroll eligible individuals, to seek federal approval to cease new enrollment in the Medicaid Waiver component of the Ohio Home Care Program.
- Authorizes ODJFS to transfer an individual enrolled in an ODJFS-administered Medicaid waiver program to another ODJFS-administered Medicaid waiver program if the individual is eligible for the Medicaid waiver program and the transfer does not jeopardize the individual's health or safety.
- Revises the law that permits ODJFS to seek Medicaid waivers to provide early intervention services for children under age three and therapeutic services for children with autism.
- Permits ODJFS to seek Medicaid waivers to provide specialized habilitative services for adults with autism.
- Requires that ODJFS seek federal authorization to (1) establish an ICF/MR Conversion Pilot Program under which no more than 200 individuals receive home and community-based services rather than ICF/MR services and (2) refuse, with certain exceptions, to enter into or amend a Medicaid provider agreement with the operator of an ICF/MR if the provider agreement would authorize the operator to receive Medicaid payments for more ICF/MR beds than the operator receives before the pilot program begins implementation.
- Creates the ICF/MR Conversion Advisory Council to provide consultation services regarding the ICF/MR Conversion Pilot Program.
- Permits ODJFS to seek a federal Medicaid waiver authorizing the Assisted Living Program under which assisted living services are provided to not more than 1,800 individuals residing in a residential care facility.
- Requires that ODJFS request a federal Medicaid waiver authorizing ODJFS to create a pilot program under which not more than 200 individuals receive a spending authorization to pay for the cost of medically necessary health care services the pilot program covers.

- Eliminates an eligibility requirement for the Ohio Access Success Project that required a Medicaid recipient to have resided continuously in a nursing facility for not less than 18 months before applying to participate in the project.
- Requires that ODJFS permit any recipient of Medicaid-funded nursing facility services to apply to participate in the Ohio Access Success Project and, if an application is received before the applicant has been a recipient of Medicaid-funded nursing facility services for six months, to ensure that an assessment is conducted as soon as practicable to determine whether the applicant is eligible to participate in the project.
- Creates the Medicaid Administrative Study Council to study the administration of the Medicaid program under the assumption that the General Assembly will enact by July 1, 2007, a law establishing a new cabinet level department to administer the program.
- Authorizes the Auditor of State to audit providers of Medicaid services without a request from ODJFS.
- Authorizes the Auditor of State to conduct a single performance audit of the Medicaid program during fiscal years 2006 and 2007.
- Permits ODJFS to conduct reviews of the Medicaid program.
- Requires that ODJFS enter into an agreement with the Ohio Department of Administrative Services (DAS) for DAS to contract with a vendor to perform an assessment of the Medicaid Data Warehouse System's data collection and warehouse functions, including the ability to link the data sets of all of the agencies serving Medicaid recipients.
- Requires that ODJFS adopt rules establishing procedures for enforcing rules governing Medicaid services, including procedures for corrective action plans for, and imposing sanctions on, violators of the rules.
- Allows ODJFS to terminate or not renew a Medicaid provider agreement without an administrative hearing if the provider has not billed or otherwise submitted claims for payment for two or more years and has not left an active address with ODJFS.
- Permits ODJFS to recover overpayments made to Medicaid providers.

- Requires that subsequent final fiscal audits or findings be reduced by the amount of any overpayments collected, as appropriate.
- Permits a state agency that administers a component of the Medicaid Program for ODJFS to commence actions to recover overpayments the state agency identifies.
- Requires that the state agency first seek voluntary repayment and permits the agency to negotiate a settlement, which must be approved by ODJFS before being implemented.
- Requires that the state agency hold an administrative hearing to collect the overpayment if voluntary repayment cannot be achieved.
- Provides that any final order resulting from a hearing held by the state agency must be issued by ODJFS.
- Permits ODJFS to issue a final administrative order under the Medicaid Program without holding an administrative hearing if notice of an opportunity for the hearing has been provided but the notified entity does not make a timely request for a hearing.
- Applies a substantially similar provision to state agencies seeking recovery of Medicaid overpayments identified in administering components of the Medicaid Program on ODJFS's behalf.
- Modifies the composition of ODJFS's Pharmacy and Therapeutics Committee to include an additional pharmacist.
- Authorizes ODJFS to take certain actions as necessary to fulfill ODJFS' duties under the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

VIII. Hospital Care Assurance Program

- Delays the termination date of the Hospital Care Assurance Program (HCAP) from October 16, 2005 to October 16, 2007.

IX. Disability Medical Assistance

- Would have terminated the Disability Medical Assistance Program effective October 1, 2005 (VETOED).

X. Title XX Social Services

- Eliminates provisions requiring ODJFS and the Departments of Mental Health and Mental Retardation and Developmental Disabilities to each commission an entity independent of itself to conduct a biennial audit of its expenditures of funds received through the federal Title XX Social Services Block Grant.
- Requires social services providers to pay the cost of audits required by the state departments responsible for distributing federal Title XX funds and the departments' respective local agencies.
- Eliminates provisions specifying that the cost of an audit must be reimbursed under a subsequent or amended Title XX contract.
- Modifies ODJFS's rule-making authority for the Title XX program by specifying that rules pertaining to applicants and recipients are to be adopted under procedures requiring public hearings and other rules are to be adopted as internal management rules.
- Authorizes the federally allowed percentage of funds received under the TANF Block Grant to be used by ODJFS for the provision of Title XX social services.
- Provides that the use of TANF funds for Title XX services is not subject to other laws governing Title XX social services, and eliminates similar provisions of law.
- Establishes auditing procedures and rule-making powers for the use of TANF funds for Title XX social services.

XI. Food Stamp Program

- Requires ODJFS to implement a federally authorized exemption to the Food Stamp Program's work requirement for fiscal years 2006 and 2007.

I. General

Support Services Federal Operating Fund

(R.C. 5101.07)

The act creates the Support Services Federal Operating Fund. If appropriate for the Fund, as determined by the Director of Job and Family Services, moneys received from the federal government are to be deposited into the Fund. The act requires that money in the Fund be used to pay the federal share of the Ohio Department of Job and Family Services' (ODJFS) costs for computer projects and operating costs of the parts of ODJFS that provide general support services for ODJFS work units.

Support Services State Operating Fund

(R.C. 5101.071)

The act creates the Support Services State Operating Fund. The Fund is to consist of payments made to it from other appropriation items by intrastate transfer voucher. The act requires that money in the Fund be used for ODJFS's costs for computer projects and the operating costs of the parts of ODJFS that provide general support services for ODJFS work units.

Consolidated funding allocations

(R.C. 5101.21)

Continuing law permits ODJFS to enter into one or more written fiscal agreements with boards of county commissioners under which financial assistance is awarded for duties of county family services agencies (county departments of job and family services, child support enforcement agencies, and public children services agencies) included in the agreements.

The act eliminates a requirement that a fiscal agreement include a board of county commissioner's assurance that, if ODJFS establishes a consolidated funding allocation for two or more duties of a county family services agency included in the fiscal agreement, the board will require the agency to use funds available in the consolidated funding allocation only for the purpose for which the funds is appropriated. The act also eliminates ODJFS's authority to adopt rules governing the establishment of consolidated funding allocations.

Increase in county share of public assistance

(R.C. 5101.16 and 5101.163)

Continuing law requires that each board of county commissioners pay a percentage of the costs of certain public assistance programs, including Ohio Works First¹¹⁵ and Medicaid. However, the amount that a board of county commissioners must pay for a state fiscal year cannot exceed 110% of the county's share for such costs for the immediately preceding state fiscal year.

The act permits ODJFS to increase a county's share of public assistance costs if the United States Secretary of Health and Human Services requires an increase in the state's maintenance of effort for the TANF block grant because of one or more failures, resulting from the actions or inactions of one or more county family services agencies,¹¹⁶ to meet a federal TANF requirement. ODJFS is permitted to increase a county's share of public assistance costs only to the amount the county's county family services agencies are responsible for the increase in the state's maintenance of effort as determined pursuant to rules ODJFS is to adopt. The increase may cause a county's share of public assistance costs to exceed the 110% limit.

In requiring a county to increase its share of public assistance costs, ODJFS is not required to follow law unchanged by the act that governs ODJFS's disciplinary actions against such agencies. That law requires ODJFS to provide counties notice and an opportunity for a hearing.

Recovery of excess payments made to county family services agencies

(R.C. 5101.244)

The act provides that, if a county department of job and family services, public children services agency, or child support enforcement agency submits an expenditure report to ODJFS and ODJFS subsequently determines that an allocation, advance, or reimbursement the department makes to the agency, or a cash draw the agency makes exceeds the allowable amount for the expenditure, ODJFS may adjust, offset, withhold, or reduce an allocation, cash draw, advance, reimbursement, or other financial assistance to the agency as necessary to recover

¹¹⁵ *Ohio has implemented the Temporary Assistance for Needy Families (TANF) program as Ohio Works First.*

¹¹⁶ *A county's county family services agencies are the county department of job and family services, public children services agency, and child support enforcement agency.*

the amount of the excess payment. ODJFS may take the action without following law that governs ODJFS's disciplinary actions against such agencies.

Eligibility for certain ODJFS-administered programs

(R.C. 5101.47)

Under continuing law, the Director of ODJFS may accept applications, determine eligibility, and perform related administrative functions for Medicaid, the Children's Health Insurance Program parts I and II, publicly funded child day-care, and other programs the Director determines are supportive of children or families with at least one employed member. The act specifically authorizes the Director to re-determine eligibility also. In addition, the act permits the Director to perform these functions for additional programs: the Food Stamp program and other programs the Director determines will achieve administrative cost saving and efficiency through ODJFS's performance of those functions. The act alters the law related to supportive programs, providing that the Director may perform any of the functions described above with regard to programs that support children, *adults*, or families, and eliminates the requirement that the families have at least one employed member.

The act creates an exception to the authority that the Director otherwise has as discussed above. The Director may not conduct face-to-face interviews for a program discussed above if federal law requires a face-to-face interview to complete an eligibility determination for the program.

Study on disability determinations

(Section 206.66.46)

ODJFS, the Rehabilitation Services Commission, county departments of job and family services, and other state and local government entities actively engaged in providing programs or services for which disability is an eligibility requirement are required by the act to conduct a study that considers all of the following:

(1) The feasibility of an interagency agreement among the state and local government entities whereby one of the entities performs disability determinations for the programs and services;

(2) Which of the state and local government entities should perform the disability determinations;

(3) Potential cost savings and other advantages, as well as potential disadvantages, that might result from the interagency agreement;

(4) Processes by which the interagency agreement could be implemented, including an estimate of the approximate time needed to implement it.

The act requires that a written report of the study be prepared not later than six months after the effective date of this provision of the act. The report is to be submitted to the Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate.

Statistics on frequently dispensed drugs under the Ohio's Best Rx Program

(R.C. 5110.39)

Prior law required ODJFS, by April 1, 2005, to create a list of the 25 drugs most often dispensed to Ohio's Best Rx Program participants under the Program and to determine the average percentage savings Program participants receive for each of these 25 drugs. The percentage savings is to be calculated by comparing the average amount that terminal distributors charge Program participants for each of the drugs, on a date selected by ODJFS, to the average of the terminal distributors' usual and customary charge for each of the drugs on that date. The act requires ODJFS to calculate the prices annually no later than March 1 of each year.

Temporary civil service authority of the Director of Job and Family Services

(Section 569.06)

Overview

Among the various responsibilities of the Director of Administrative Services is the performance of certain duties under the Civil Service Law. Specifically, the Law requires the Director to carry out a variety of civil service-related functions with regard to officers and employees in the classified civil service of the state, including, but not limited to, ODJFS officers and employees.

Changes made by the act

Under the act, for the period beginning on July 1, 2005, and ending on June 30, 2007 (FY 2006 and FY 2007), the Director of ODJFS is granted the authority to perform certain civil service-related functions with regard to employees of and positions in ODJFS that are in the classified civil service--which functions are normally the responsibility of the Director of Administrative Services. Specifically, during this period, the Director of ODJFS may do the following notwithstanding any contrary provision of the Civil Service Law:

- Establish, change, and abolish positions of employment in ODJFS that are in the classified civil service;
- Assign, reassign, classify, reclassify, transfer, reduce, promote, and demote ODJFS *exempt employees* who are in the classified civil service, including, but not limited to, assigning or reassigning an employee to a bargaining unit classification if the Director of ODJFS determines that the classification is the proper classification for that employee.¹¹⁷

The act provides that any actions taken by the Director pursuant to this temporary grant of authority that relate to ODJFS exempt employees who are in the classified civil service and are subject to 5 C.F.R. 900.603 must be consistent with the requirements of that federal law.¹¹⁸ Furthermore, if an ODJFS exempt employee who is in the classified civil service and paid in accordance with Salary Schedule E-1 (the salary schedule that includes steps within its pay ranges) is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a *lower job classification* by the Director of ODJFS under the temporary grant of authority, the Director of ODJFS, or in the case of a transfer of the employee outside ODJFS, the Director of Administrative Services, must assign the exempt employee to the appropriate job classification and place him or her in pay step X (an amount of pay that does not fit into the pay steps established in Salary Schedule E-1). Such an employee must not receive an increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.

Finally, the act provides that actions taken by the Director of ODJFS pursuant to the temporary grant of authority are not subject to appeal to the State Personnel Board of Review.

¹¹⁷ *"Exempt employee" means a permanent full-time or permanent part-time employee who is paid by warrant of the Auditor of State, whose position is included in the job classification plan the Director of Administrative Services establishes, and who is not subject to the Collective Bargaining Law--Chapter 4117. of the Revised Code (R.C. 124.152--not in the act).*

¹¹⁸ *5 C.F.R. 900.603 addresses standards for a merit system of personnel administration for intergovernmental personnel under federal civil service laws.*

II. Workforce Development

Compliance with workforce development agreements

(R.C. 5101.241)

Local areas receive financial assistance from ODJFS to undertake workforce development activities. Ongoing law permits ODJFS to take action against local officials to enforce compliance with workforce development agreements, including, but not limited to, initiating mandamus actions to compel compliance, imposing fines, and withholding funding. The act also allows ODJFS to issue a notice of intent to revoke approval of all or part of a local development plan effected that conflicts with state or federal law and then to effect the revocation.

Ongoing law also permits a party to request an administrative review of an action proposed to enforce the party's compliance with a workforce development agreement. Currently, depending upon the proposed action, the party may have 15 or 30 days to request an administrative review. If ODJFS receives a timely request, ODJFS is required to postpone taking its action for 15 or 30 days so that ODJFS and the party have an informal opportunity to resolve the dispute. If the informal opportunity fails to resolve the dispute, the Director appoints an administrative review panel to conduct a formal review. The act modifies the dispute resolution process by removing the time requirements for the process and allowing the parties to develop a written resolution to the dispute at any time prior to submitting the written report described in the paragraph below. Thus, the formal review of the dispute and the informal dispute resolution process may occur at the same time.

Currently, at the conclusion of its review, the administrative review panel submits a report and recommendations for action to the Director. The Director may modify or reject the recommendations, but must give the reasons therefor. The act eliminates the requirement for the Director to state the reasons for a modification or rejection of the panel's recommendations. The Director's final action is binding and the act provides the action is not subject to review; current law states only that the action is not subject to further "Departmental" review.

In addition to the disciplinary actions taken by the Director against local workforce development boards, the act specifies in statute that the Governor, as stated in federal law, may decertify a local workforce development board for any of the following reasons in accordance with division (e) of section 117 of the "Workforce Investment Act of 1998" 112 Stat. 936, 29 U.S.C. 2801, as amended ("WIA"):

(1) Fraud or abuse;

(2) Failure to carry out the requirements of WIA, including failure to meet performance standards established by the federal government for two consecutive years.

Under the act, if the Governor finds that access to basic WIA services is not being provided in a local area, the Governor may declare an emergency and in consultation with the chief elected officials of the local area affected, arrange for provision of these services through an alternative entity during the time period in which resolution of the problem preventing service delivery in the local area is pending. The act specifies that an action taken by the Governor as described above is not subject to the appeals process provided in continuing law.

III. Child Care

Publicly funded child care reimbursement ceilings and market rate survey

(Section 206.67.13)

The act requires ODJFS to increase the reimbursement ceilings for providers of publicly funded child care, in fiscal years 2006 and 2007. The reimbursement ceiling must be raised to 65% of the market's usual and customary cost to the public based on the most recently conducted market rate survey.

The act also requires ODJFS to estimate the monthly average of children that it expects to enroll in publicly funded child care from December of 2005 to March of 2006. ODJFS must later determine the actual number of children enrolled in publicly funded child care for that period. If the monthly estimate exceeds the actual enrollment numbers by at least 2,000 children, ODJFS is permitted to increase reimbursement for publicly funded child care in FY 2007. The reimbursement ceiling may be raised to not more than 70% of the usual and customary cost to the public based on the most recent federally required market rate survey.

The act also requires ODJFS to conduct a study of market rates for the provision of child care in order to establish new rates for publicly funded child care. ODJFS must have new rates for publicly funded child care established by July 1, 2006. The act requires all child care providers to participate in the study.

IV. Child Support Enforcement

Lump sum payments sent to the Office of Child Support

(R.C. 3121.12)

Under continuing law modified by the act, on receiving notice that a lump sum payment of \$150 or more is to be paid to an obligor (the person who is obliged to pay child support under a child support order), the court or child support enforcement agency, as applicable, is required to do either of the following:

(1) If the obligor is in default under the support order or has any arrearages under the support order, issue an order requiring transmittal of the lump sum payment to the Office of Child Support in ODJFS;

(2) If the obligor is not in default under the support order and does not have any arrearages under the support order, issue an order directing the person who gave the notice to immediately pay the full amount of the lump sum to the obligor.

On receipt of the moneys, the Office of Child Support is required to pay the amount of the lump sum payment that is necessary to discharge all of the obligor's arrearages to the obligee and, within two business days after its receipt of the money, any amount that is remaining after the payment of the arrearages to the obligor. However, federal law and regulations generally require that any amounts collected be treated first as payment on the required child support obligation for the month in which the amount was collected. If any amounts collected are in excess of that obligation, the excess amounts must be treated as payments on arrearages. (42 U.S.C. 657(a) and 45 C.F.R. 302.51(a)(1).) The Ohio Administrative Code similarly requires payment received to be applied to current obligations before being applied to arrearages (O.A.C. 5101:1-31-14).

The act makes two changes. First, if the court or child support enforcement agency determines that the obligor is in default under the support order or has any arrearages under the support order, the act authorizes the court or agency to issue an order requiring the transmittal of the portion of the lump sum payment sufficient to pay the arrearage in full. Second, the act replaces the provision requiring the Office of Child Support to apply the payment to the arrearage and then transmit any remaining moneys to the obligor with a provision that requires the Office to distribute whatever portion of the lump sum it receives in accordance with administrative rules.

Electronic disbursement of child support

(R.C. 3121.50)

The act permits the Office of Child Support to distribute child support amounts by means of electronic disbursement, rather than by check or warrant, unless otherwise prohibited from doing so by state or federal law. The act also requires the person receiving the child support to accept payment by electronic means. The Director of ODJFS may adopt or amend rules under the Administrative Procedure Act (R.C. Chapter 119.) to assist in the implementation of this provision.

Child support operating fund

(R.C. 3125.191)

The act creates in the state treasury the Child Support Operating Fund as a state special revenue fund. ODJFS may deposit into the Fund a portion of the federal incentives related to the federal Child Support Enforcement laws contained in Title IV-D of the Social Security Act that ODJFS receives from the United States Department of Health and Human Services. ODJFS may use money in the Fund for program and administrative purposes associated with its State Child Support Enforcement Program.

Retention of federal incentives for child support enforcement programs

(Sections 206.66.91 and 206.66.92)

The act allows ODJFS to retain \$1.5 million of federal incentives given for successful implementation of child support enforcement programs. This money is to reimburse the state for its share of payments made for mandatory contracts used by county child support enforcement agencies (CSEAs) in child support enforcement. The act also authorizes ODJFS to retain a portion of those same federal incentives for the state's share of monthly optional contracts used by county CSEAs. The amount retained by ODJFS is dependent on actual usage of the optional contracts by each county CSEA.

V. Child Welfare and Adoption

Summary of minor adoption proceedings

(R.C. 2151.416 and 3107.10)

The act repeals provisions that require courts to send monthly summaries regarding minor adoption proceedings to ODJFS and require ODJFS to annually report on the assembled results compiled from these summaries.

Under prior law, at the conclusion of each adoption proceeding, the court had to prepare a summary of the proceeding, and each month send copies of the preceding month's summaries to ODJFS. The summary was required to contain the following:

(1) A notation of the nature and approximate value or amount of anything paid in connection with the proceeding and indicating the category to which any payment relates;

(2) If the court had not issued a decree because the final accounting in the case had not been filed, a notation of that fact and a statement of the reason for refusing to issue the decree, related to the financial data summarized under clause (1);

(3) If the adoption was arranged by an attorney, a notation of that fact.

Prior law prohibited the summary from identifying any person by name, but it could contain additional narrative material that the court considered useful to an analysis of the summary.

Prior law also required ODJFS to annually report to the public and to the General Assembly on the results of these summaries, including a compilation and analysis of data submitted in the summaries.

The act repeals these provisions.

VI. Title IV-A Temporary Assistance for Needy Families

Title IV-A of the Social Security Act authorizes the TANF block grant. States may receive federal funds under the TANF block grant to operate programs designed to meet one or more of the following purposes:

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;



(2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies;

(4) Encourage the formation and maintenance of two-parent families.

Persons who receive assistance funded in part with federal TANF funds are subject to a number of federal requirements, including time limits and work requirements. Federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. It includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families. All of the following are excluded from the definition of "assistance":

(1) Nonrecurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months;

(2) Work subsidies such as payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(3) Supportive services such as child care and transportation provided to employed families;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;



(7) Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.¹¹⁹

ODJFS is required to prepare and submit to the United States Department of Health and Human Services a state plan to receive federal funds under the TANF block grant. The state plan must provide for the following TANF programs: (1) Ohio Works First (OWF), (2) Prevention, Retention, and Contingency (PRC), (3) other TANF programs established by the General Assembly or an executive order issued by the Governor that are administered or supervised by ODJFS, and (4) components of OWF, PRC, and other ODJFS administered or supervised TANF programs that the state plan identifies as components.

Participants of OWF receive TANF-funded assistance and are therefore subject to the federal TANF requirements such as time limits and work requirements. State law governing PRC permits programs to provide benefits and services that are excluded from the definition of assistance in the federal TANF regulations. State law requires that other TANF programs also provide benefits and services that are excluded from the federal definition of assistance unless the state law or executive order establishing the programs provides otherwise.

New TANF programs

The act creates three new TANF programs: the Employment Retention Incentive Program, the Title IV-A Demonstration Program, and the Kinship Permanency Incentive Program.

Employment Retention Incentive Program

(Section 206.67.10)

The act permits ODJFS to establish and administer the Employment Retention Incentive Program under which ODJFS provides cash payments to eligible assistance groups. The program may be created in fiscal year 2007.

If ODJFS establishes the program, the program's cash payments must be provided in a manner that enables them to be excluded from the definition of assistance in federal TANF regulations and instead be benefits that the federal regulations exclude from the definition of assistance. Each county department of job and family services is required to make eligibility determinations for the program and perform other administrative duties in accordance with rules that the act requires ODJFS to adopt.

¹¹⁹ 42 C.F.R. 260.31.

To be eligible for the program, an assistance group must meet all of the following requirements in accordance with rules ODJFS must adopt:

- (1) The assistance group must apply in accordance with the application process established by the rules and using an application that contains all of the information required by the rules;
- (2) The assistance group must have ceased to participate in OWF;
- (3) The assistance group must include a member who was employed during the last month the assistance group participated in OWF;
- (4) That member of the assistance group must remain employed;
- (5) The assistance group must meet all other eligibility requirements established in the rules.

In addition to the rules discussed above, the act requires that ODJFS adopt rules establishing (1) the application process for the program, including the process to verify eligibility for the program, (2) the amounts that eligible assistance groups are to receive as cash payments under the program, and (3) the frequency and duration that eligible assistance groups are to receive cash payments under the program. The Governor vetoed a provision that would have provided that the rules establishing the application process could not require that applications be submitted to county departments of job and family services.

Title IV-A Demonstration Program

(R.C. 5101.80, 5101.801, and 5101.803)

The act creates the Title IV-A Demonstration Program to provide funding for innovative and promising prevention and intervention projects that meet one or more of the four purposes of the TANF block grant and are for individuals with specific and multiple barriers to achieving or maintaining self sufficiency and personal responsibility. ODJFS is permitted to provide funding for such projects to government entities and, to the extent permitted by federal law, private, not-for-profit entities with which ODJFS enters into agreements. ODJFS must begin to implement the Program no later than January 1, 2006. But, the Program is subject to continuing law that authorizes ODJFS to terminate or reduce funding for a TANF program on determining that funds are insufficient.

ODJFS is permitted to solicit proposals for entities seeking to enter into an agreement with ODJFS for the purpose of receiving funding under the Title IV-A Demonstration Program. ODJFS is to solicit the proposals in accordance with criteria ODJFS develops. ODJFS may enter into such agreements with an entity

that meets the proposal's criteria and, if the entity's proposed project does not potentially affect persons in each county of the state, provides ODJFS evidence that the entity has notified the county department of job and family services of each county where persons may be affected by the project.¹²⁰ In developing the criteria, soliciting the proposals, and entering into the agreements, ODJFS must comply with all applicable federal and state laws, the Title IV-A state plan, amendments to the state plan, and federal waivers the United States Secretary of Health and Human Services grants.

Continuing law specifies a number of provisions that must be included in an interagency agreement between ODJFS and a state agency concerning the state agency's administration of a TANF program or component. The act requires that an agreement between ODJFS and a government or private, not-for-profit entity regarding a project under the Title IV-A Demonstration Program also include the provisions. For example, the agreement must include a complete description of the benefits and services that are to be provided and the methods of administration. The act also requires that such agreements include provisions for determining the expected performance outcomes and an evaluation to determine the success in achieving the performance outcomes.

A government entity or private, not-for-profit entity that receives funding to administer a project under the Title IV-A Demonstration Program is subject to requirements continuing law establishes for county family services agencies¹²¹ and state agencies that administer other TANF programs under the supervision of ODJFS. For example, the government and private, not-for-profit entities are prohibited from establishing a policy governing a project that is inconsistent with a policy the Director of ODJFS establishes. ODJFS must prescribe forms for applications, certificates, reports, records, and accounts of the entities and require reports and information from the entities as may be necessary or advisable regarding the program.

Continuing law provides that an authorized representative of ODJFS or a county family services agency or state agency administering a TANF program must have access to all records and information bearing thereon for the purposes of investigations. The act provides that an authorized representative of a government entity or private, not-for-profit entity administering a project funded in whole or in part with funds provided under the Title IV-A Demonstration

¹²⁰ *The notice to the county departments must be in writing.*

¹²¹ *The following are county family services agencies: county departments of job and family services, child support enforcement agencies, and public children services agencies.*

Program must have access to all records and information bearing on the project for the purpose of investigations.

Continuing law establishes a process for individuals to appeal a decision of a state or local government entity administering a public assistance program. Under this process, the individual may have a state hearing with ODJFS. That decision may be appealed to the Director of ODJFS or the Director's designee and ultimately to a court of common pleas. ODJFS is permitted to adopt rules establishing a different appeals process for certain TANF programs. The act provides that the rules may establish a different appeals process for the Title IV-A Demonstration Program.

Kinship Permanency Incentive Program

(R.C. 3125.18, 5101.802, 5101.35, 5101.80, 5101.801, and 5153.16; Section 206. 67.08)

The act creates the Kinship Permanency Incentive Program. Under the Program an initial one-time incentive payment is to be given to a kinship caregiver¹²² to defray the costs of initial placement of the minor child in the kinship caregiver's home. The Program may provide additional permanency incentive payments for the minor child at six-month intervals for a total period not to exceed 36 months. The public children services agency in each county is to make all initial and ongoing eligibility determinations for the Program under the supervision of ODJFS. The Director of ODJFS must begin to implement the Program no later than January 1, 2006. However, the Director may terminate or reduce funding for the Program if the Director determines that federal or state funds are insufficient to fund the Program and the Director of Budget and Management approves the termination or reduction.

A kinship caregiver may participate in the Program if all of the following requirements are met:

- (1) The kinship caregiver applies to a public children services agency;

¹²² A kinship caregiver is a person 18 years of age or older, caring for a child in place of the child's parents, and is related to the child in one of the following relationships: grandparents (including great-, great-great-, or great-great-great), siblings, aunts, uncles, nieces, nephews (including great-, great-great-, or great-great-great), first cousins, first cousins once removed, stepparents, stepsiblings, spouses or former spouses of any of the above, and the legal guardian or custodian of the child (R.C. 5101.85, not in the act).

(2) The child the kinship caregiver is caring for is a child with special needs as determined under existing ODJFS rules;¹²³

(3) A juvenile court has adjudicated that the child is an abused, neglected, dependent, or unruly child and determined that it is in the child's best interest to be in the legal custody of the kinship caregiver or the probate court has determined that it is in the child's best interest to be in the guardianship of the kinship caregiver;

(4) The kinship caregiver is either the child's legal custodian or legal guardian;

(5) The child resides with the kinship caregiver pursuant to a placement approval process to be established in ODJFS rules;

(6) The gross income of the kinship caregiver's family does not exceed 200% of the federal poverty guidelines for a family of the same size.

Rulemaking

The act requires the Director of ODJFS to adopt rules establishing the following:

(1) The application process for the Program;

(2) The placement approval process through which a child is placed with a kinship caregiver;

¹²³ *To be classified as a child with "special needs" under these rules, the public children services agency must have determined that the child cannot be returned to the home of the child's parents and has one of the following conditions or factors that would require the child to receive adoption assistance or medical assistance: (1) the child is in a sibling group that should be placed together, (2) the child is a member of a minority or ethnic group, (3) the child's age, (4) the child has remained in custody of the public children services agency for more than one year, (5) the child has a medical condition, physical impairment, mental retardation, or a developmental disability, (6) the child has an emotional or behavioral problem, (7) the child has a social or medical history, or the child's family has a social or medical history, that may place the child at risk of acquiring a medical condition, a physical, mental, or developmental disability, or an emotional disorder, (8) has been in the home of the prospective adoptive parent(s) as a foster child for at least one year and would experience severe separation and loss if placed in another setting, (9) has experienced previous adoption disruption or multiple placements (Ohio Administrative Code §5101:2-47-30).*

- (3) The initial and ongoing eligibility determination process for the Program;
- (4) The amount of the incentive payments provided under the Program;
- (5) The method by which the payments are provided to a kinship caregiver;
- (6) Anything else the Director considers necessary.

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 the Program from placement with kinship caregivers rather than other out-of-home placements.

ODJFS must submit a report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate not later than December 31, 2008, and December 31, 2010.

Ohio Works First

The act revises state law governing OWF.¹²⁴

Gross income eligibility requirement

(R.C. 5107.10)

There are a number of eligibility requirements that an assistance group must meet to qualify to participate in OWF. One of the requirements is an income eligibility requirement. The income eligibility requirement has two steps. The act modifies the first step.

Under prior law, an assistance group's gross monthly income, less amounts disregarded, could not exceed an amount specified in state law. For example, an assistance group with three members could not have gross monthly income, less

¹²⁴ *Ohio Works First provides cash assistance to poor families and individuals. It is part of the TANF program.*

amounts disregarded, exceeding \$630. The act eliminates the specific dollar amounts and provides instead that an assistance group's gross monthly income, less amounts disregarded, cannot exceed the higher of (1) 50% of the federal poverty guidelines or (2) the dollar amount specified in the prior state law.¹²⁵ The annual revisions that the United States Department of Health and Human Services makes to the federal poverty guidelines are to be applied starting on the first day of each July.

LEAP Program

(R.C. 5107.05, 5107.30, and 5107.301)

The Learning, Earning, and Parenting (LEAP) Program is a component of OWF under which participating teens¹²⁶ must attend an educational program that is designed to lead to the attainment of a high school diploma or its equivalent. 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.

The act authorizes ODJFS to provide, in addition to the incentive payment, other incentives to teens who satisfy the LEAP Program's education requirements. The act requires that the Director of ODJFS adopt rules establishing the LEAP Program's incentives.

The Director is authorized by the act to provide an award to individuals who successfully complete the LEAP Program's requirements and enroll in post-secondary education. If provided, the award is to be provided in accordance with rules the Director is authorized to adopt. The rules may specify the form that the award is to take and the requirements for receiving it.

VII. Medicaid

Medicaid is a health-care program for low-income children and families and for aged, blind, and disabled persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act. Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states

¹²⁵ *This means, for example, that an assistance group with three members cannot have gross monthly income, less amounts disregarded, exceeding \$653. Under prior law, the gross income maximum was \$630.*

¹²⁶ *"Teen" is defined as an OWF participant who is under age 18, or age 18 and in school, and a parent or pregnant.*

options for covering other groups of persons and types of benefits. ODJFS is responsible for the administration of Medicaid. ODJFS, however, contracts with other entities to perform certain administrative functions.

Medicaid eligibility reduction

(R.C. 5111.019; Section 206.66.39)

The act requires ODJFS to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services to reduce the amount of income an individual may have to qualify for Medicaid as a parent of a child under age 19. The reduction is from 100% to 90% of the federal poverty guidelines. ODJFS must submit the amendment not later than 90 days after the date the act is signed by the Governor and filed with the Secretary of State. The reduction is to be implemented not later than the date the amendment is approved.

The act maintains the other eligibility requirements for parents. The parent must reside with his or her child, must not otherwise qualify for Medicaid, and must satisfy all other relevant eligibility requirements. The act also maintains the limitation that a parent's eligibility is limited to two years.

Aged, Blind, and Disabled Medicaid eligibility--the home as a countable resource

(R.C. 5111.011)

Ohio law requires the Director of ODJFS to adopt rules establishing eligibility requirements for Medicaid.¹²⁷ Accordingly, the Director has adopted rules that specify that an aged, blind, or disabled individual may qualify for Medicaid if the individual, among other requirements, meets certain financial criteria.¹²⁸ The financial criteria that are considered are income and "countable resources."¹²⁹ Countable resources are cash, personal property, and real property that an individual or spouse has an ownership interest in, has the legal ability to

¹²⁷ R.C. 5111.011(B).

¹²⁸ Ohio Department of Job and Family Services. "ABD Medicaid – Income & Resource Requirements," (visited May 24, 2005), accessible at <<http://jfs.ohio.gov/ohp/consumers/abdFinReq.stm>>.

¹²⁹ O.A.C. 5101:1-39-08 (regarding income) and 5101:1-39-05 (regarding resources).

access in order to convert to cash, and is not legally prohibited from using for support and maintenance.¹³⁰

The administrative rules provide that a home, or "homestead," is not a countable resource if it is the applicant's or recipient's principal place of residence.¹³¹ However, a home becomes a countable resource if the applicant or recipient resides in a medical institution for six months or longer and does not have a spouse or certain relatives that live in the home.¹³²

The act places in the Revised Code the administrative rule that specifies when a home becomes a countable resource for purposes of determining an aged, blind, or disabled individual's eligibility for Medicaid, but modifies it by extending to 13 months (from six months) the period of time during which the home is not a countable resource. The act maintains the exclusion in administrative rules that applies when a spouse or qualified relative, as explained above, resides in the home.

Medicaid look-back period

(R.C. 5111.011)

Federal law requires that states' Medicaid programs provide that institutionalized individuals and, at a state's option, noninstitutionalized individuals are ineligible for certain services for a period of time if the individual or individual's spouse disposes of assets for less than fair market value on or after the look-back date. For an institutionalized individual, the look-back date is a date that is a certain number of months before the first date that the individual is both an institutionalized individual and has applied for Medicaid. For a noninstitutionalized individual, the look-back date is a date that is a certain number of months before the date the individual applies for Medicaid or, if later, the date on which the individual disposes of assets for less than fair market value. The number of months used for the look-back depends on whether the assets are part of a trust. If the assets are not part of a trust, the number of months is 36

¹³⁰ O.A.C. 5101:1-39-05.

¹³¹ O.A.C. 5101:1-39-31.1.

¹³² *These relatives include a child who is under age 21, blind, or disabled; a son or daughter who is age 65 or older and is financially dependent on the applicant or recipient for housing; and a sibling who has a verified equity and ownership interest in the home and resided in the home for at least one year immediately before the date the applicant or recipient was admitted to the medical institution. O.A.C. 5101:1-39-31.2.*

(three years). If the assets are part of a trust, the number of months is 60 (five years).

The act requires that ODJFS apply to the United States Secretary of Health and Human Services for a federal Medicaid waiver as necessary to make the number of months used for the look-back period be 60 regardless of whether the assets are part of a trust. If the waiver is not approved, the look-back period is to be the number of months specified in the federal law discussed above.

Medicaid eligibility fraud

(R.C. 2307.65 and 2913.401)

Criminal offense

(R.C. 2913.401)

The act creates the offense of Medicaid eligibility fraud. It prohibits a person from knowingly doing any of the following in an application for Medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive Medicaid benefits:

- (1) Making or causing to be made a false or misleading statement;
- (2) Concealing an interest in property;
- (3) Except as provided in paragraph (4), failing to disclose a transfer of property that occurred within 36 months before submission of the application or document;
- (4) Failing to disclose a transfer of property that occurred within 60 months before submission of the application or document and was made to an irrevocable trust a portion of which is not distributable to the applicant for Medicaid benefits or the recipient of Medicaid benefits or to a revocable trust.

Under the act, Medicaid eligibility fraud is a misdemeanor of the first degree if the value of the Medicaid benefits paid as a result of the violation is under \$500. If the value is \$500 or more and less than \$5,000, the offense is a felony of the fifth degree. If the value is \$5,000 or more and less than \$100,000, the offense is a felony of the fourth degree. If the value is \$100,000 or more, the offense is a felony of the third degree.

In addition to imposing a sentence, the court must order a person who is guilty of Medicaid eligibility fraud to make restitution in the full amount of any Medicaid benefits paid on behalf of an applicant for or recipient of Medicaid

benefits for which the applicant or recipient was not eligible plus interest at the rate applicable to judgments on unreimbursed amounts from the date on which the benefits were paid to the date on which restitution is made. The act requires that amounts recovered as restitution and interest on those amounts be credited to the state General Revenue Fund and that any applicable federal share be returned to the appropriate federal agency or department.

The act states that the remedies and penalties it provides are not exclusive and do not preclude the use of any other criminal or civil remedy for any act that is in violation of the section prohibiting Medicaid eligibility fraud. The act also declares that the section does not apply to a person who fully disclosed in an application for Medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive Medicaid benefits all of the interests in property of the applicant for or recipient of Medicaid benefits, all transfers of property by the applicant for or recipient of Medicaid benefits, and the circumstances of all those transfers.

The act defines "Medicaid benefits" as benefits under the medical assistance program established under R.C. Chapter 5111. and defines "property" as any real or personal property or other asset in which a person has any legal title or interest.

Civil action

(R.C. 2307.65)

The act authorizes the Attorney General to bring a civil action in the Franklin County Court of Common Pleas on ODJFS's behalf, and the prosecuting attorney of the county in which Medicaid eligibility fraud occurs to bring a civil action in the court of common pleas of that county on behalf of the county department of job and family services, against a person who commits Medicaid eligibility fraud for the recovery of the amount of benefits paid on behalf of a person that either department would not have paid but for the violation minus any amounts paid in restitution under the act (R.C. 2913.401) and for reasonable attorney's fees and all other fees and costs of litigation.

In a civil action authorized by the act, if the defendant failed to disclose a transfer of property in violation of R.C. 2913.401, the court may also grant any of the following relief to the extent permitted by the relevant federal statute (42 U.S.C. 1396p):

(1) Avoidance of the transfer of property that was not disclosed to extent of the amount of benefits ODJFS or the county department would not have paid but for the violation;



- (2) An order of attachment or garnishment against the property;
- (3) An injunction against any further disposition by the transferor or transferee, or both, of the property the transfer of which was not disclosed or against the disposition of other property by the transferor or transferee;
- (4) Appointment of a receiver to take charge of the property transferred or of other property of the transferee;
- (5) Any other relief that the court considers just and equitable.

The act authorizes ODJFS or the county department, to the extent permitted by 42 U.S.C. 1396p, to enforce a judgment obtained in a civil action for Medicaid eligibility fraud by levying on property the transfer of which was not disclosed in violation of R.C. 2913.401 or on the proceeds of the transfer of that property.

The act states that the foregoing remedies do not apply if the person to whom the property was transferred acquired the property in good faith and for fair market value. The act also provides that the remedies are not exclusive and do not preclude the use of any other criminal or civil remedy for any act that is in violation of R.C. 2913.401. Amounts of Medicaid benefits recovered in a civil action brought under the act must be credited to the state General Revenue Fund, and any applicable federal share must be returned to the appropriate federal agency or department.

Medicaid Estate Recovery Program

Overview

Medicaid estate recovery is a federal requirement that states seek from the estates of certain deceased Medicaid recipients the cost of certain correctly paid Medicaid benefits. Federal law gives states some discretion in how to define "estate" for the purposes of Medicaid estate recovery systems. A state may limit recovery to assets included in an individual's probate estate or permit recovery against any real or personal property or other assets in which the individual had any legal title or interest at the time of death, to the extent of the interest. (42 U.S.C. 1396p(b)(4).) Prior to the act, Ohio limited recovery to the assets included in the Medicaid recipient's probate estate. The act expands Ohio's Medicaid Estate Recovery Program to permit recovery against any real or personal property or other assets in which the individual had any legal title or interest at the time of death, to the extent of the interest. The act also amends the Medicaid Estate Recovery Program law to make it more closely parallel federal law.

Generally

(R.C. 5111.11)

Prior law. For the purpose of recovering the cost of services correctly paid under Medicaid to a recipient age 55 or older, ODJFS had to institute an estate recovery program against the property and estates of Medicaid recipients to recover Medicaid correctly paid on their behalf to the extent that federal law and regulations permitted the implementation of a program of that nature. ODJFS was required to seek to recover Medicaid correctly paid only after the recipient and the recipient's surviving spouse, if any, had died and only at a time when the recipient had no surviving child who was under age 21 or blind or permanently and totally disabled.

ODJFS was permitted to enter into a contract with any individual or private entity under which the individual or private entity administered the estate recovery program on ODJFS's behalf or performed any of the functions required to carry out the program. The contract could provide for the individual or private entity to be compensated from the property recovered from the estates of Medicaid recipients or could provide for another manner of compensation agreed to by the individual or private entity and ODJFS. Regardless of whether it was administered by ODJFS or an individual or private entity under contract with ODJFS, the program had to be administered in accordance with applicable requirements of federal law and regulations and state law and rules.

The act. The act requires ODJFS to institute a Medicaid Estate Recovery Program "to the extent permitted by federal law." It also expands the definition of "estate" from which recovery may be made. Under the program, ODJFS is required to generally do both of the following:

(1) For the costs of services the Medicaid program correctly pays or will pay on behalf of a permanently institutionalized individual¹³³ of any age, seek

¹³³ Under the act, "permanently institutionalized individual" means an individual who: (1) is an inpatient in an institution, (2) is required, as a condition of the Medicaid program paying for the individual's services in the institution, to spend for costs of medical or nursing care all of the individual's income except for an amount for personal needs specified by ODJFS, and (3) cannot reasonably be expected to be discharged from the institution and return home.

"Institution" means a nursing facility, intermediate care facility for the mentally retarded, or a medical institution.

For the purpose of determining whether an individual meets the definition of "permanently institutionalized individual," the act creates a rebuttable presumption that

adjustment or recovery from the individual's estate or on the sale of property of the individual or spouse that is subject to a Medicaid estate recovery lien;

(2) For the costs of services the Medicaid program correctly pays on behalf of an individual 55 years of age or older who is not a permanently institutionalized individual, seek adjustment or recovery from the individual's estate.

Exceptions

(R.C. 5111.11(C))

Under the act, no adjustment or recovery may be made from a permanently institutionalized individual's estate or on the sale of property of a permanently institutionalized individual that is subject to a Medicaid estate recovery lien or from a non-institutionalized individual's estate while: (1) the individual's spouse is alive, or (2) a child of the individual (if the child is under age 21 or is considered blind or disabled under the federal law governing the Supplemental Security Income Program) is alive.

Also, under the act no adjustment or recovery may be made from a permanently institutionalized individual's home that is subject to a Medicaid estate recovery lien while either of the following lawfully reside in the home:

(1) The permanently institutionalized individual's sibling who resided in the home for at least one year immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time;

(2) The permanently institutionalized individual's child who provided care to the permanently institutionalized individual that delayed the individual's institutionalization and resided in the home for at least two years immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time.

the individual cannot reasonably be expected to be discharged from an institution and return home if either of the following is the case: (1) the individual declares that he or she does not intend to return home, or (2) the individual has been an inpatient in an institution for at least six months without a discharge plan.

Waiver

(R.C. 5111.11(D))

The act requires, rather than permits as under prior law, ODJFS to waive adjustment or recovery of Medicaid correctly paid if the Director of ODJFS determines that adjustment or recovery would work an undue hardship. The act, however, permits ODJFS to limit the duration of an undue hardship waiver to the period during which the undue hardship exists.

Definition of "estate"

(R.C. 5111.11(A)(1))

Under prior law, "estate" was defined, for the purposes of the Medicaid estate recovery law, solely as all property to be administered under the Probate Code and property that would be administered under that Code if it were not subject to certain release from administration provisions.¹³⁴

The act expands the definition to also include other assets, including interests in property. Under the act, "estate" includes both (1) all real and personal property and other assets to be administered under the Probate Code and property that would be administered under that Code if it were not subject to certain release from administration provisions, and (2) any other real and personal property and other assets in which an individual had any legal title or interest at the time of death¹³⁵ (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.

Medicaid estate recovery liens

(R.C. 5111.111)

When lien may be imposed. Under continuing law, ODJFS may place a lien against the property of a Medicaid recipient or recipient's spouse that ODJFS may recover as part of the Medicaid Estate Recovery Program. Prior law excluded

¹³⁴ *Certain small estates and intestate estates may obtain a release or summary release from administration under the Probate Code (R.C. 2113.03 and 2113.031).*

¹³⁵ *Under the act, "time of death" is prohibited from being construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death.*

from the lien property of a recipient of home and community-based services,¹³⁶ and the spouse of such a recipient.

Under the act, generally, no lien may be imposed against the property of an individual before the individual's death on account of Medicaid paid or to be paid on the individual's behalf. But, ODJFS generally may impose a lien against the real property of a Medicaid recipient *who is a permanently institutionalized individual* and against the real property of the recipient's spouse, including any real property that is jointly held by the recipient and spouse. The lien may be imposed on account of Medicaid paid or to be paid on the recipient's behalf.

But, under the act no lien may be imposed against the home of a Medicaid recipient if any of the following lawfully resides in the home: (1) the recipient's spouse, (2) the recipient's child who is under 21 years of age or is considered to be blind or disabled under the federal law governing the Supplemental Security Income Program, or (3) the recipient's sibling who has an equity interest in the home and resided in the home for at least one year immediately before the date of the recipient's admission to the institution.

Certificate. Under prior law, when Medicaid was paid on behalf of any person in circumstances under which federal law and regulations and this provision permitted the imposition of a lien, the ODJFS Director or a person designated by the Director *was permitted to* sign a certificate to that effect.

The act *requires* the ODJFS Director or a person designated by the Director to sign a certificate to effectuate a lien required to be imposed under these provisions.

Recording and duration of the lien. Under continuing law, the county department of job and family services must record the certificate, or a certified copy, in the county real estate mortgage records of every county in which real property of the recipient or spouse is situated. From the time of recording the certificate, the lien attaches to all real property of the recipient or spouse described in the certificate. Under prior law, the lien was for all amounts of aid. Under the act the lien is for all amounts for which adjustment or recovery may be made under the Medicaid Estate Recovery Program.

The act specifies that a lien imposed with respect to a Medicaid recipient under the Medicaid estate recovery lien provisions dissolves on the recipient's discharge from the institution and return home.

¹³⁶ *"Home and community-based services" was defined as services provided pursuant to a waiver under 42 U.S.C.A. 1396n.*

Administration of the Medicaid Estate Recovery Program

(R.C. 5111.11 and 5111.112)

The act repeals a law that permitted ODJFS to enter into a contract with any person under which the person administered the Medicaid Estate Recovery Program on ODJFS's behalf or performed any of the functions required to carry out the program. In its place, the act requires that ODJFS certify amounts due under the Medicaid Estate Recovery Program to the Attorney General pursuant to continuing law that authorizes the Attorney General to collect debts owed the state.

The act specifically authorizes the Attorney General to contract with any person or government entity to collect the amounts due under the Medicaid Estate Recovery Program on behalf of the Attorney General. The Attorney General, in entering into the contract, must comply with all of the requirements that must be met for the state to receive federal financial participation for the costs incurred in entering into the contract and carrying out actions under the contract. The contract may provide for the person or government entity with which the Attorney General contracts to be compensated from the property recovered under the Medicaid Estate Recovery Program or may provide for another manner of compensation agreed to by the parties to the contract.

Regardless of whether the Attorney General collects the amounts due under the Medicaid Estate Recovery Program or contracts with a person or government entity to collect the amounts due, the amounts due must be collected in accordance with applicable requirements of federal and state law.

Notice to the Medicaid Estate Recovery Program Administrator

(R.C. 2117.061)

The executor, administrator, or commissioner of a decedent's estate or any person who files an application to have a decedent's estate released from administration (the person responsible for the estate) is required to determine whether the decedent was a Medicaid recipient if the decedent was age 55 or older at the time of death. The act requires that such determination also be made if the decedent was a permanently institutionalized individual at the time of death and specifies that the determination concerns whether the decedent was a Medicaid recipient at any time during the decedent's life. Under prior law, if the decedent was determined to have been a Medicaid recipient, the person responsible for the estate was required to give written notice to that effect to the Administrator of the Medicaid Estate Recovery Program. The act requires instead that the person responsible for the estate submit a properly completed Medicaid estate recovery

reporting form to the Administrator. As under prior law for the written notice, the Medicaid estate recovery reporting form must be submitted not later than 30 days after the granting of letters testamentary, administration of the estate, or filing of an application for release from administration or summary release from administration.

The act requires that the Medicaid Estate Recovery Program Administrator prescribe the reporting form. 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 subject to the Medicaid Estate Recovery Program. The Administrator must include on the reporting form a statement printed in bold letters informing the person responsible for the estate that knowingly making a false statement on the reporting form is falsification, a misdemeanor of the first degree.

The person responsible for the estate is required to mark the appropriate box on the appropriate probate form to indicate that the person has complied with the notice requirements regarding Medicaid estate recovery. The act requires that the probate court send a copy of the completed probate form to the Medicaid Estate Recovery Program Administrator.

Administrator of Medicaid Estate Recovery Program

(R.C. 2113.041(A))

The act clarifies that the affidavit that the Medicaid Estate Recovery Program Administrator may present to a financial institution requesting that the financial institution release account proceeds to recover the cost of services correctly provided to a Medicaid recipient applies to a Medicaid recipient who is subject to the Medicaid Estate Recovery Program.

State Medicaid plan amendment

(Section 206.66.48)

The act requires the ODJFS Director to submit a state Medicaid plan amendment to the United States Secretary of Health and Human Services as necessary for the implementation of the act's changes to the Medicaid Estate Recovery Program.

Medicaid co-payment program

(R.C. 5111.0112)

Prior law permitted ODJFS to establish a co-payment program under which Medicaid recipient may be charged a co-payment for services. The act requires that the co-payment program be established.

The program must establish co-payment requirements for only dental services, vision services, nonemergency emergency department services, and prescription drugs other than generic drugs, to the extent permitted by federal law.

The act specifies that, with one exception, no Medicaid provider may refuse services to a Medicaid recipient who is unable to pay a co-payment for the service; however, this prohibition does not relieve a Medicaid recipient from the obligation to pay the co-payment, nor does it prohibit a provider from attempting to collect unpaid co-payments. No provider may waive a Medicaid recipient's obligation to pay the provider a co-payment, and no provider or drug manufacturer (including the manufacturer's representative, employee, independent contractor, or agent) may pay a co-payment on a Medicaid recipient's behalf.

The act specifies an exception to the prohibition against a provider refusing service to a Medicaid recipient unable to pay a co-payment. If it is the provider's routine business practice to refuse service to any individual who owes the provider an outstanding debt, the provider may consider an unpaid Medicaid co-payment as an outstanding debt and refuse service to a Medicaid recipient who owes the provider an outstanding debt. If the provider intends to refuse service to a Medicaid recipient who owes the provider an outstanding debt, the provider must notify the recipient of the provider's intent to refuse services.

Medicaid coverage of dental services

(Section 206.66.44)

The act requires that the Medicaid program cover dental services for fiscal years 2006 and 2007. For Medicaid recipients age 21 or older, the coverage is to be less in amount, duration, and scope than the coverage provided immediately before the effective date of this provision of the act. The act explicitly states that the act does not limit ODJFS's ability to adopt, amend, or rescind rules applicable to dental coverage for Medicaid recipients under age 21 that limit or reduce coverage, reduce reimbursement levels, or subject covered services to co-payments.

Medicaid coverage of vision services

(Section 206.66.45)

The act requires that the Medicaid program cover vision services in fiscal years 2006 and 2007. However, the act explicitly states that the act does not limit ODJFS's ability to adopt, amend, or rescind rules applicable to vision coverage, including rules that limit or reduce services, reduce reimbursement levels, or subject covered services to co-payments.

Prohibition on reimbursement for erectile dysfunction drugs

(R.C. 5111.027)

The act prohibits the Medicaid program from providing reimbursement for prescription drugs for treatment of erectile dysfunction, such as Viagra®, as part of the Medicaid prescription drug service.

Supplemental Drug Rebate Program

(R.C. 5111.082)

ODJFS is permitted to establish a Supplemental Drug Rebate Program under which drug manufacturers may be required to provide ODJFS a supplemental rebate as a condition of having the drug manufacturer's drug products covered by the Medicaid program without prior approval. The act eliminates the requirement that ODJFS, if the Supplemental Drug Rebate Program is established, exempt from the program all of a drug manufacturer's drug products that have been approved by the United States Food and Drug Administration for the treatment of (1) mental illness, including schizophrenia, major depressive disorder, and bipolar disorder and (2) HIV or AIDS.

The act authorizes ODJFS to receive a supplemental rebate negotiated under the Supplemental Drug Rebate Program for a drug dispensed to a Medicaid recipient pursuant to a prescription or for a drug purchased by a Medicaid provider for administration to a Medicaid recipient in the provider's primary place of business.

Multiple-state drug purchasing program

(R.C. 5111.0114)

The act authorizes the Director of ODJFS to enter into or administer an agreement or cooperative arrangement with other states to create or join a multiple-state prescription drug purchasing program for the purpose of negotiating



with manufacturers of dangerous drugs to receive discounts or rebates for dangerous drugs dispensed under Medicaid.

State Maximum Allowable Cost Program for Medicaid drug reimbursement

(R.C. 5111.083)

The United States Department of Health and Human Services established the Federal Upper Limit Program in 1987 as a means of limiting the amount that Medicaid could reimburse for drugs with available generic equivalents--called "maximum allowable cost" (MAC) drugs.¹³⁷ Specifically, a "maximum allowable cost" drug is a drug for which at least three versions of the drug rated therapeutically equivalent exist and at least three suppliers for the drug are listed in the current editions of published national compendia.¹³⁸

Under administrative rules, ODJFS cannot reimburse a pharmacy for MAC drugs, in the aggregate, at a rate higher than the Federal Upper Limit prices. Drugs that are not designated as MAC drugs are "estimated acquisition cost" (EAC) drugs. Administrative rules provide that reimbursement for an EAC drug must be based on the estimate of the wholesale acquisition cost (WAC)¹³⁹ for the drug determined by periodic review of pricing information from Ohio drug wholesalers, pharmaceutical manufacturers, and a pharmacy pricing update service. Maximum reimbursement for an EAC drug, excluding dispensing fees, is an amount equal to the WAC plus 9%. However, if the WAC for a drug cannot be determined, the reimbursement for an EAC drug, excluding dispensing fees, is an amount equal to the average wholesale price (AWP)¹⁴⁰ minus 12.8%.¹⁴¹

¹³⁷ *Centers for Medicare and Medicaid Services. "Federal Upper Limits on Drugs," accessible at <<http://www.cms.hhs.gov/medicaid/drugs/drug10.asp>> (visited March 18, 2005).*

¹³⁸ *Id.*

¹³⁹ *The United States Department of Health and Human Services defines "wholesale acquisition cost" as the price paid by a wholesaler for a drug purchased from the wholesaler's supplier, typically the manufacturer of the drug. On financial statements, the total of wholesale acquisition cost amounts equals the wholesaler's cost of goods sold. Publicly disclosed or listed WAC amounts may not reflect all available discounts. United States Department of Health and Human Services, Health Resources and Services Administration, Pharmacy Services Support Center. "Glossary of Pharmacy-related Terms," (visited May 24, 2005), accessible at <<http://pssc.aphanet.org/resources-glossary.htm>>.*

¹⁴⁰ *The United States Department of Health and Human Services defines "average wholesale price" (AWP) to mean the national average of the list prices for a drug*

The act requires ODJFS to establish a State Maximum Allowable Cost Program for purposes of managing reimbursement for certain prescription drugs available under Medicaid.¹⁴² ODJFS must do all of the following with respect to the Program:

- Identify and create a list of prescription drugs to be included in the Program.
- Update the list of prescription drugs described above on a weekly basis.
- Review the state maximum allowable cost for each drug included on the list on a weekly basis.

ODJFS may adopt rules in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) to implement this requirement.

Medicaid e-prescribing system

(R.C. 5111.084)

The act authorizes ODJFS to establish an e-prescribing system for the Medicaid program. Under the e-prescribing system, certain Medicaid providers must use an electronic system when prescribing a drug for a Medicaid recipient. The e-prescribing system must eliminate the need for those Medicaid providers to make prescriptions for Medicaid recipients by handwriting or telephone and provide those Medicaid providers with an up-to-date, clinically relevant drug information database and a system of electronically monitoring Medicaid recipients' medical history, drug regimen compliance, and fraud and abuse.

The act provides that, if ODJFS establishes an e-prescribing system, ODJFS must determine, before the beginning of each fiscal year, the ten Medicaid providers that issued the most prescriptions for Medicaid recipients receiving

charged by pharmaceutical wholesalers to pharmacies. "AWP" is sometimes referred to as a "sticker price" because it is not the actual price that larger purchasers normally pay. "AWP" information is publicly available. Id.

¹⁴¹ O.A.C. 5101:3-9-05.

¹⁴² According to a Congressional Budget Office report, many states have recently taken steps to establish state-specific upper limits for generic and brand-name drugs available under Medicaid--limits that are frequently lower than the federal upper limits. Congressional Budget Office. "Medicaid's Reimbursement to Pharmacies for Prescription Drugs," (Dec. 2004), accessible at <<http://www.cbo.gov/ftpdocs/60xx/doc6038/12-16-Medicaid.pdf>>.

hospital services during the calendar year preceding that fiscal year; notify those providers that they must use the e-prescribing system for the upcoming fiscal year; and require the ten providers to use the e-prescribing system. The act also requires ODJFS to seek the most federal financial participation available for the development and implementation of the e-prescribing system.

Community mental health services

(R.C. 5111.023)

The state Medicaid plan covers certain mental health services provided by community mental health facilities. ODJFS is required to seek federal approval to provide assertive community treatment and intensive home-based mental health services as part of the community mental health services. Prior law required that ODJFS have sought the approval not later than July 21, 2004. The act extends the deadline for seeking the approval to July 21, 2006.

Medicaid coverage of alcohol, drug addiction, and mental health services

(Section 206.67.18)

As soon as practicable, ODJFS and the Departments of Mental Health and Alcohol and Drug Addiction Services, in conjunction with behavioral health providers and county boards of alcohol, drug addiction, and mental health services, must specify procedures consistent with federal law for the implementation of the *State of Ohio Community Behavioral Health Medicaid Business Plan*.¹⁴³ If it is determined that any portion of the Plan does not comply with federal law, the Departments, in conjunction with the providers and county boards, must specify procedures to work toward implementation of that portion of the Plan. A report of the progress of the Plan's implementation must be submitted to the Speaker, Senate President, and Minority Leaders of the House and Senate not later than March 1 and October 1 of each year until all components of the Plan have been fully implemented.

¹⁴³ ODJFS, the Departments of Mental Health and Alcohol and Drug Addiction Services, and the Ohio Association of Behavioral Health Authorities finalized the State of Ohio Community Behavioral Health Medicaid Business Plan in August 2004.

Medicaid reimbursement of long-term care services

Introduction

The act revises the statutory formula used to determine the Medicaid reimbursement rate for nursing facility services. However, uncodified sections of the act override the new statutory formula for fiscal years 2006 and 2007.

Fiscal year 2006 reimbursement system for nursing facilities

(Section 206.66.22)

The act establishes fiscal year 2006 Medicaid reimbursement rates for nursing facilities. A nursing facility with a valid Medicaid provider agreement on June 30, 2005, and a valid Medicaid provider agreement for fiscal year 2006 is to be paid the sum of (1) the rate the provider is paid on June 30, 2005, and (2) unless the facility is exempt from paying the nursing home franchise permit fee, \$1.95.¹⁴⁴ If a nursing facility undergoes a change of operator¹⁴⁵ on July 1, 2005, the new operator of the facility is to be paid the rate paid to the former operator on June 30, 2005, plus, if the new operator pays the franchise permit fee, \$1.95. If a nursing facility undergoes a change of operator during the period beginning July 2, 2005, and ending June 30, 2006, the new operator is to be paid the rate paid to the former provider on the day immediately before the effective date of the change of operator. If, during fiscal year 2006, a facility obtains certification as a nursing facility and begins participating in the Medicaid program, the facility is to be paid a rate that is the median of all rates paid to nursing facilities on July 1, 2005.¹⁴⁶

The act provides that a nursing facility's rate for fiscal year 2006 may be adjusted for only certain reasons. First, an adjustment resulting from an audit of a nursing facility's Medicaid cost report for calendar year 2003 may be applied to its fiscal year 2006 rate not later than July 1, 2008. Second, a nursing facility's 2006 rate may be adjusted pursuant to a process established in ODJFS rules to reflect a

¹⁴⁴ *The \$1.95 represents the amount that the act increases the franchise permit fee for nursing facilities.*

¹⁴⁵ *See "Change of operator, closure, and voluntary termination and withdrawal" below.*

¹⁴⁶ *The act provides that, if during fiscal year 2007, one or more Medicaid-certified beds are added to a nursing facility with a valid Medicaid provider agreement for fiscal year 2006, the facility is to be paid a rate for the new beds that is the same as the facility's rate for the Medicaid-certified beds in the facility on the day before the new beds are added. This provision was meant to apply to beds added during fiscal year 2006, not 2007.*

change in the facility's capital costs due to (1) a change of a Medicaid provider agreement that goes into effect before July 1, 2005, and for which a rate adjustment is not implemented before June 30, 2005, (2) a reviewable activity¹⁴⁷ for which a certificate of need application is filed with the Director of Health before July 1, 2005, costs are incurred before June 30, 2005, and a rate adjustment is not implemented before June 30, 2005, or (3) an activity that the Director of Health, before July 1, 2005, rules is not a reviewable activity and for which costs are incurred before June 30, 2005, and a rate adjustment is not implemented before June 30, 2005. The Governor vetoed a provision that would have restricted the adjustment of a nursing facility's 2006 rate to reflect a change in the facility's capital costs due to a reviewable activity or activity ruled not a reviewable activity. The vetoed provision would have provided that such adjustment could be made only if, after all other Medicaid obligations have been met, there are appropriations in the main Medicaid appropriation line item in the state budget (appropriation item 600-525, Health Care/Medicaid), that would otherwise lapse to the General Revenue Fund. ODJFS would have been permitted to make such adjustments to the extent possible using the remaining appropriations that would otherwise lapse.

Fiscal year 2007 reimbursement system for nursing facilities

(Section 206.66.23)

The Medicaid reimbursement rate for nursing facility services provided during fiscal year 2007 is to be determined in accordance with the act's new statutory formula. However, the act provides that if a nursing facility's rate as determined under the new formula is more than 102% of the rate the facility is paid on June 30, 2006, ODJFS must reduce the facility's 2007 rate so that the rate is no more than 102% of its June 30, 2006, rate. If a nursing facility's 2007 rate as determined under the new formula is less than 98% of its June 30, 2006, rate, ODJFS is required to increase the facility's rate so that the rate is no less than 98% of its June 30, 2006, rate.

¹⁴⁷ *Activities that are considered reviewable may not be performed without a certificate of need from the Director of Health. Reviewable activities include the establishment, development, or construction of a new long-term care facility, replacement of an existing long-term care facility, renovation of a long-term care facility that involves a capital expenditure of \$2 million or more (excluding expenditures for equipment, staffing, or operational costs), and increases in a long-term care facility's bed capacity.*

Nursing facilities rates subject to franchise permit fee changes

(Sections 206.66.22 and 206.66.23)

The act requires ODJFS to reduce nursing facilities' fiscal years 2006 and 2007 rates if the United States Centers for Medicare and Medicaid Services requires that the nursing home franchise permit fee be reduced or eliminated. The rates are to be reduced as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

Fiscal years 2006 and 2007 reimbursement system for ICFs/MR

(Sections 206.66.25 and 206.66.27)

The act provides in an uncodified section that an ICF/MR that has a valid Medicaid provider agreement on June 30, 2005, and a valid Medicaid provider agreement for fiscal years 2006 and 2007 is to be paid, for ICF/MR services provided during those fiscal years, the rate the ICF/MR is paid on June 30, 2005. If an ICF/MR undergoes a change of operator¹⁴⁸ during fiscal year 2006 or 2007, the new operator of the ICF/MR is to be paid the rate paid to the former operator on the day immediately before the effective date of the change of operator. If a facility obtains certification as an ICF/MR and begins participation in the Medicaid program during those fiscal years, the ICF/MR is to be paid a rate that is median of all rates paid to ICFs/MR on July 1, 2005. If one or more Medicaid-certified beds are added to an ICF/MR, the facility is to be paid a rate for the new beds that is the same as the rate paid for the Medicaid-certified beds that are in the ICF/MR on the day before the new beds are added.

The act authorizes ODJFS to increase the rate paid to an ICF/MR for fiscal years 2006 and 2007 by an amount specified in rules to reimburse the ICF/MR for active treatment day programming because of the termination of the community alternative funding system.¹⁴⁹

The act provides that an adjustment necessitated by an audit of an ICF/MR's calendar year 2003 Medicaid cost report may be applied to its fiscal years 2006 and 2007 rates.

¹⁴⁸ See "**Change of operator, closure, and voluntary termination and withdrawal**" below.

¹⁴⁹ See "**Community alternative funding system terminated**" in the part of this analysis concerning the Department of Mental Retardation and Developmental Disabilities.

Reimbursement formula revised

(R.C. 5111.02, 5111.20, 5111.21, 5111.22, 5111.221, 5111.222, 5111.223, 5111.23, 5111.231 (5111.232), new 5111.231, 5111.235, 5111.24, 5111.241, 5111.242, 5111.243, 5111.244, 5111.25, 5111.251, 5111.254, 5111.255, 5111.257 (5111.258), new 5111.257, 5111.26, 5111.261, 5111.262 (repealed), 5111.263, 5111.264, 5111.265, 5111.266, 5111.27, 5111.28, 5111.29, 5111.291, 5111.30, 5111.31, 5111.32, 5111.33, and 5111.34; Section 206.66.24)

The act substantially revises the Revised Code's Medicaid reimbursement formula for nursing facilities. But, because of uncodified provisions of the act concerning rates for fiscal years 2006 and 2007,¹⁵⁰ the revisions will not fully affect facilities' rates until fiscal year 2008.

Costs centers. Among the revisions are changes to the categories into which nursing facilities' costs are placed for the purpose of calculating reimbursement rates. The categories are referred to as cost centers.¹⁵¹ Prior law established four cost centers: capital, direct, indirect, and other protected. The act provides that some of the cost centers are no longer applicable to nursing facilities, establishes a new cost center for nursing facilities called ancillary and support costs, and makes other changes to the cost centers. The following table compares the nursing facilities' cost centers under prior law and their cost centers under the act.

	NFs' prior cost centers	NFs' new cost centers
Capital costs	Cost of ownership and nonextensive renovation. "Costs of ownership" are the actual expenses incurred for all of the following: (1) depreciation and interest on any capital assets that cost \$500 or more per item, including buildings, building improvements that are not approved as nonextensive renovations, equipment, extensive renovations, and transportation equipment, (2)	Cost of ownership only. The part of the costs of ownership concerning depreciation and interest on capital assets that cost \$500 or more per item no longer includes (1) extensive renovations or (2) equipment for which the costs were reported as administrative and general costs on the facility's Medicaid cost report covering calendar year 1992.

¹⁵⁰ See "**Fiscal year 2006 reimbursement system for nursing facilities**" and "**Fiscal year 2007 reimbursement system for nursing facilities**" above.

¹⁵¹ Because the new formula is based on a price model, the cost centers may begin to be called price centers.

	NFs' prior cost centers	NFs' new cost centers
	amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) except as provided in indirect care costs, lease and rent of land, building, and equipment. The costs of capital assets of less than \$500 per item may be considered capital costs of ownership in accordance with a provider's practice. "Costs of nonextensive renovation" are the actual expenses incurred for depreciation or amortization and interest on renovations that are not extensive renovations.	
Direct care costs	Costs for all of the following: (1) registered nurses, licensed practical nurses, and nurse aides employed by the facility, (2) direct care staff, administrative nursing staff, medical directors, social services staff, activities staff, psychologists and psychology assistants, social workers and counselors, habilitation staff, qualified mental retardation professionals, program directors, respiratory therapists, habilitation supervisors, and other persons holding degrees qualifying them to provide therapy, (3) purchased nursing services, (4) quality assurance, (5) training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or self-insurance claims and related costs for personnel listed above, other than purchased nursing services, (6) consulting and management fees related to	Does not include costs for social services staff, activities staff, psychologists, psychology assistants, social workers, or counselors. Includes costs for medical supplies, emergency oxygen, habilitation supplies, and universal precautions supplies.



	NFs' prior cost centers	NFs' new cost centers
	direct care, (7) allocated direct care home office costs, and (8) other direct-care resources specified as direct care costs in rules.	
Other protected costs	Costs for (1) medical supplies, (2) real estate, franchise, and property taxes, (3) natural gas, fuel oil, water, electricity, sewage, and refuse and hazardous medical waste collection, (4) allocated other protected home office costs, and (5) any additional costs defined as other protected costs in rules.	None
Indirect care costs	All reasonable costs that are not capital, direct care, or other protected costs. Includes costs for all of the following: habilitation supplies, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, liability insurance, bookkeeping, purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or self-	None



	NFs' prior cost centers	NFs' new cost centers
	insurance claims and related costs for personnel listed above. Also includes the cost for equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the facility's Medicaid cost report covering calendar year 1992.	
Ancillary and support	None	All reasonable costs incurred by a nursing facility that are not direct care or capital costs. Includes costs for all of the following: activities, social services, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, medical equipment, utilities, liability insurance, bookkeeping, purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or self-insurance claims and

	NFs' prior cost centers	NFs' new cost centers
		related costs for personnel listed above. Also includes costs for equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the facility's Medicaid cost report for the cost reporting period covering calendar year 1992.

Direct care costs. The act revises the formula used to determine a nursing facility's rate for direct care costs. Under the act, a nursing facility's direct care rate is to be determined semi-annually by multiplying the cost per case-mix unit determined for the facility's direct care peer group by the facility's semiannual case-mix score.

The act requires that ODJFS determine each direct care peer group's cost per case-mix unit at least once every ten years. The first time ODJFS makes the determination, it must use information from calendar year 2003. ODJFS may select which calendar year to use for subsequent determinations. The year used is called the "applicable calendar year." To determine a direct care peer group's cost per case-mix unit, ODJFS must do all of the following:

(1) Determine the cost per case-mix unit for each nursing facility in the peer group for the applicable calendar year by dividing each facility's desk reviewed, actual, allowable, per diem direct care costs for the applicable calendar year by the facility's annual average case-mix score for the applicable calendar year.

(2) Identify which nursing facility in the peer group is at the 25th percentile of the cost per case-mix unit. In making this determination, ODJFS must exclude nursing facilities that participated in the Medicaid program under the same provider for less than 12 months in the applicable calendar year and nursing facilities whose direct care costs are more than one standard deviation from the mean desk-reviewed, actual, allowable, per diem direct care cost for all nursing facilities in the nursing facility's peer group for the applicable calendar year.

(3) Calculate the amount that is seven per cent above the cost per case-mix unit for the nursing facility identified under (2) above.

(4) Multiply the amount calculated under (3) above by the rate of inflation for the 18-month period beginning on the first day of July of the applicable calendar year and ending the last day of December of the calendar year immediately following the applicable calendar year using the employment cost index for total compensation, health services component, published by the United States Bureau of Labor Statistics.

A case-mix score is the measure of the relative direct-care resources needed to provide care and habilitation to a nursing facility resident. ODJFS must calculate an annual average case-mix score for each nursing facility using, in part, data for each resident, regardless of payment source, from a resident assessment instrument specified in rules. The act requires that ODJFS also determine a semiannual case-mix score for each nursing facility. The semiannual case-mix score, however, is to use, in part, data for each resident who is a Medicaid recipient. The annual average case-mix score is to be used in determining peer groups' cost per case-mix units. The semiannual case-mix score is to be used to determine a specific nursing facility's rate for direct care costs.

For the purposes of calculating case-mix scores, nursing facilities and ICFs/MR must submit complete assessment data for each resident not later than 15 days after the end of each calendar quarter. Prior law required nursing facilities to submit the data to ODJFS. The act requires nursing facilities to submit the data to the Department of Health and, if required by ODJFS rules, ODJFS. ICFs/MR continue to be required to submit the data to ODJFS.

Whereas prior law permitted ODJFS to adopt rules governing the submission of resident assessment data, the act requires that ODJFS adopt rules addressing the resident assessment data issue. The act eliminates a provision that permits rules establishing procedures for facilities to correct assessment information to prohibit nursing facilities and ICFs/MR from submitting corrections, for the purpose of calculating its annual average case-mix score, after a certain amount of time.¹⁵²

Capital costs. The act also revises the formula used to determine a nursing facility's rate for capital costs. Under the act, a nursing facility's rate for capital costs is to be the median rate for capital costs for the nursing facilities in the facility's capital peer group. ODJFS is required to determine the median rate for capital costs for each peer group at least once every ten years. As with the rate for

¹⁵² For ICFs/MR, the time is two calendar quarters after the end of the quarter to which the information pertains or, if the information pertains to the quarter ending the 31st day of December, after the 31st day of the following March. For nursing facilities, the time is the earlier of the time applicable to ICFs/MR or the deadline established by federal regulations.

direct care costs, ODJFS must use information from calendar year 2003 the first time it makes the determination and may select which calendar year to use for subsequent determinations. To determine a peer group's median rate for capital costs, ODJFS must do both of the following:

(1) Use the greater of each nursing facility's actual inpatient days for the applicable calendar year or the inpatient days the facility would have had for the applicable calendar year if its occupancy rate had been 100%. For the purpose of determining a nursing facility's occupancy rate, ODJFS must include any beds that the nursing facility removes from its Medicaid-certified capacity after June 30, 2005, unless the facility also removes the beds from its licensed bed capacity.

(2) Exclude nursing facilities that participated in the Medicaid program under the same provider for less than twelve months in the applicable calendar year and nursing facilities whose capital costs are more than one standard deviation from the mean, desk-reviewed, actual, allowable, per diem capital cost for all nursing facilities in the nursing facility's peer group for the applicable calendar year.

Ancillary and support costs. A nursing facility's rate for the new cost center ancillary and support costs is to be the facility's ancillary and support peer group's rate for such costs. ODJFS is required to determine each peer group's rate for ancillary and support costs at least once every ten years. As with the rate for direct care costs and capital costs, ODJFS must use information from calendar year 2003 the first time it makes the determination and may select which calendar year to use for subsequent determinations. To determine a peer group's rate for ancillary and support costs, ODJFS must do all of the following:

(1) Determine the rate for ancillary and support costs for each nursing facility in the peer group for the applicable calendar year by using the greater of the facility's actual inpatient days for the applicable calendar year or the inpatient days the facility would have had for the applicable calendar year if its occupancy rate had been 90%. For the purpose of determining a facility's occupancy rate, ODJFS is to include any beds that the facility removes from its Medicaid-certified capacity unless the facility also removes the beds from its licensed bed capacity.

(2) Identify which nursing facility in the peer group is at the 25th percentile of the rate for ancillary and support costs for the applicable calendar year. In making this determination, ODJFS must exclude nursing facilities that participated in the Medicaid program under the same provider for less than twelve months in the applicable calendar year and nursing facilities whose ancillary and support costs are more than one standard deviation from the mean desk-reviewed, actual, allowable, per diem ancillary and support cost for all nursing facilities in the facility's peer group for the applicable calendar year.

(3) Calculate the amount that is three per cent above the rate for ancillary and support costs for the nursing facility at the 25th percentile identified under (2) above.

(4) Multiply the amount calculated under (3) above by the rate of inflation for the 18-month period beginning on the first day of July of the applicable calendar year and ending the last day of December of the calendar year immediately following the applicable calendar year using the consumer price index for all items for all urban consumers for the North Central region, published by the United States Bureau of Labor Statistics.

Tax costs. In addition to a rate for the three cost centers discussed above, the act requires that ODJFS pay a nursing facility a rate for certain tax costs. The tax costs are real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes. ODJFS is required to determine a nursing facility's rate for these tax costs at least once every ten years. As with the rate for direct care, capital, and ancillary and support costs, ODJFS must use information from calendar year 2003 the first time it makes the determination and may select which calendar year to use for subsequent determinations. To determine a nursing facility's rate for tax costs, ODJFS must divide the facility's desk-reviewed, actual, allowable, tax costs paid for the applicable calendar year by the number of inpatient days the facility would have had if its occupancy rate had been 100% during the applicable calendar year.

Franchise permit fee rate. Under prior law, the first one dollar of the nursing home franchise permit fee that a nursing facility pays was reimbursed through the other protected cost center. The remaining amount of the franchise permit fee was reimbursed using money in the Nursing Facility Stabilization Fund. The act requires instead that ODJFS pay a nursing facility a rate for the franchise permit fees it pays. The rate is to equal the amount of the franchise permit fee for the fiscal year for which the rate is paid.

Quality incentive payment. The act establishes a quality incentive payment for each nursing facility placed in the first, second, or third quality tier groups provided for by the act. Nursing facilities placed in the first group are to receive the highest payment. Nursing facilities placed in the second group are to receive the second highest payment. Nursing facilities placed in the third group are to receive the third highest payment. Nursing facilities placed in the fourth group are not to receive a payment. The mean payment, weighted by Medicaid days, is to be two per cent of the average rate for all nursing facilities calculated under the nursing facility reimbursement formula, excluding the part of the formula regarding the quality incentive payment. Nursing facilities placed in the fourth group must be included for the purpose of determining the mean payment.

ODJFS is required to place each nursing facility in one of the four tier groups annually. Each tier group must consist of one quarter of all nursing facilities participating in the Medicaid program. Which group a nursing facility is placed in depends on how many quality points the facility earns. The first group is to consist of the quarter of nursing facilities individually awarded the most number of quality points. The second, third, and fourth groups are to consist of the quarters of nursing facilities individually awarded the second, third, or fourth most number of quality points.

A nursing facility earns one quality point for each of the following accountability measures the facility meets:

- (1) Having no health deficiencies on the facility's most recent standard survey;
- (2) Having no health deficiencies with a scope and severity level greater than E, as determined under nursing facility certification standards for the Medicaid program, on the facility's most recent standard survey;
- (3) Having resident satisfaction above the statewide average;
- (4) Having family satisfaction above the statewide average;
- (5) Having a number of hours of employing nurses that is above the statewide average;
- (6) Having an employee retention rate that is above the average for the facility's direct care peer group;
- (7) Having an occupancy rate that is above the statewide average;
- (8) Having a Medicaid utilization rate that is above the statewide average;
- (9) Having a case-mix score for direct care costs that is above the statewide average.

Adjustments directed by future legislation. The act requires that ODJFS adjust the rate determined for a nursing facility as directed by the General Assembly through the enactment of law governing Medicaid payments to nursing facilities. This is to include any law that (1) establishes factors by which the rates are to be adjusted and (2) establishes a methodology for phasing in the rates from the fiscal year 2006 amount to rates determined for subsequent fiscal years.

The act establishes the Nursing Facility Rate Transition Advisory Council to develop recommendations on the methodology to be used to phase in the new

nursing facility reimbursement formula. The Council is required to prepare quarterly progress reports and, not later than nine months after the effective date of this provision of the act, a final report. The Council must submit copies of the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives.

The Council is to consist of the Director of ODJFS or the Director's designee, the Deputy Director of the Office of Ohio Health Plans of ODJFS or the Deputy Director's designee, the Director of Health or the Director's designee, one representative of Medicaid recipients residing in nursing facilities appointed by the Governor, and one representative of each of the following organizations appointed by the organization: the Ohio Academy of Nursing Homes, the Association of Ohio Philanthropic Homes and Housing for the Aging, and the Ohio Health Care Association. Members of the Council are not to receive compensation for serving on the Council. The Director of ODJFS is to serve as the Council's chair. The Council is to cease to exist on the issuance of the final report.

ODJFS is required to prepare an annual report containing recommendations on the methodology that should be used to transition paying nursing facilities for one fiscal year to the immediately succeeding fiscal year. ODJFS must submit a copy of the report to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives not later than the first day of each October.

Amortization cost not an allowable cost. The act provides that if one or more Medicaid-certified beds are relocated from a nursing facility to another nursing facility owned by a different individual or private or government entity and the application for the certificate of need authorizing the relocation is filed with the Director of Health on or after July 1, 2005, amortization of the cost of acquiring operating rights for the relocated beds is not an allowable cost for the purpose of determining the facility's Medicaid reimbursement rate.

Setting a nursing facility's initial rates. ODJFS uses a nursing facility's Medicaid cost report covering a previous calendar year when determining the facility's Medicaid reimbursement rate. This is not possible when a nursing facility is new to the Medicaid program and therefore does not have a prior Medicaid cost report. The act revises the system for setting a nursing facility's initial reimbursement rate to reflect the revisions to the reimbursement formula.

Under the revised system, a new nursing facility's rate for direct care costs is to be the product of the cost per case-mix unit determined for the facility's peer group and the facility's case-mix score. The nursing facility's case-mix score is to be the following:

(1) Unless the facility replaces an existing nursing facility that participated in the Medicaid program immediately before the replacement facility begins participating in the Medicaid program, the median annual average case-mix score for the facility's peer group;

(2) If the facility replaces an existing nursing facility that participated in the Medicaid program immediately before the replacement facility begins participating in the Medicaid program, the semiannual case-mix score most recently determined for the replaced facility as adjusted, if necessary, to reflect any differences in the number of beds in the replaced and replacement facilities.

A nursing facility's rate for ancillary and support costs under the new system for setting initial rates is to be the rate for the facility's peer group. The facility's initial rate for capital costs is to be the median rate for the facility's peer group. The facility's initial rate for tax costs is to be the median rate for tax costs for the facility's ancillary and support costs peer group. The facility's initial quality incentive payment is to be the mean quality incentive payment for all nursing facilities.

ODJFS is required to adjust a nursing facility's initial rates effective the first day of July to reflect new rate calculations for all nursing facilities. However, if a nursing facility's initial rate for direct care costs is determined using the median annual average case-mix score for the facility's peer group, the facility's direct care cost rate is to be redetermined to reflect the facility's actual semiannual case-mix score after the facility submits its first two quarterly assessment data that qualify for use in calculating a case-mix score. If a nursing facility's quarterly submissions do not qualify for use in calculating a case-mix score, ODJFS must continue to use the median annual average case-mix score for the facility's peer group in lieu of the facility's semiannual case-mix score until the facility submits two consecutive quarterly data that qualify for use in calculating a case-mix score.

Reconsideration of rates. Continuing law requires the Director of ODJFS to adopt rules establishing a process under which a nursing facility, ICF/MR, or group or association of facilities, may seek reconsideration of their Medicaid reimbursement rate. Formerly, the rules had to provide that when Medicaid certified beds were added to an existing facility, replaced at the same site, or subject to a change of ownership or lease, ODJFS, through the rate reconsideration process, was required, subject to certain limitations, to increase the facility's rate for capital costs proportionately to account for the costs of the beds that are added, replaced, or subject to a change of ownership or lease. The act provides that this requirement no longer applies to nursing facilities and provides instead that a nursing facility's rate for added, replaced, or renovated Medicaid certified beds is the same rate for the nursing facility's existing beds. The act also provides that this requirement no longer applies to an ICF/MR that is subject to a change of

ownership or lease.¹⁵³ Instead, the act's provisions regarding change of operator apply.¹⁵⁴

Continuing law provides that the rules concerning reconsideration of Medicaid reimbursement rates must include a means by which ODJFS may increase a facility's rate on demonstration that the facility's actual, allowable costs have increased because of extreme circumstances. The rules must specify the circumstances that would justify a rate increase because of extreme circumstances. The act provides that the rate reconsideration process for extreme circumstances no longer applies to nursing facilities. The act also adds a new circumstance to be considered an extreme circumstance warranting a rate reconsideration for an ICF/MR: natural disasters.

Refund of excess depreciation

(R.C. 5111.25 and 5111.251)

A nursing facility or ICF/MR that is sold may be required to refund to ODJFS the amount of excess depreciation paid to the facility for each year it operated under a Medicaid provider agreement and prorated according to the number of Medicaid patient days for which the facility received payment. The act eliminates current law that specifies that the amount of the refund depends on when the facility is sold, including that no refund is due if the facility is sold after ten or more years of operation under the provider agreement.

Medicaid cost report's due date after change of provider

(R.C. 5111.26)

The act provides that if a nursing facility undergoes a change of provider that ODJFS determines is an arm's length transaction, the new provider must submit a Medicaid cost report to ODJFS for that facility not later than 90 days after the end of the facility's first full three calendar months of operation after the change of provider. However, a nursing facility is not required to file a cost report for a calendar year if it undergoes a change of provider that is an arm's length transaction after October 1 of that calendar year.

¹⁵³ *The requirement continues to apply to an ICF/MR that adds or replaces Medicaid-certified beds.*

¹⁵⁴ *See "Change of operator, closure, and voluntary termination and withdrawal" below.*

If a nursing facility undergoes a change of provider that ODJFS determines is not an arm's length transaction, the new provider is required to file a Medicaid cost report at the same time the previous provider would have been required to file the previous provider's next cost report if the previous provider had not ceased to be the provider.¹⁵⁵ The new provider's cost report must cover the portion of the calendar year during which the new provider operated the nursing facility and the portion of the calendar year during which the previous provider operated the facility.

Medicaid provider agreements

(R.C. 5111.20, 5111.21, 5111.22, 5111.221, 5111.222, 5111.23, and 5111.31)

One condition for a nursing facility or ICF/MR to obtain Medicaid payments for providing services to Medicaid recipients is for the facility to enter into a Medicaid provider agreement with ODJFS. The act provides that the provider agreement is between a provider of a nursing facility or ICF/MR and ODJFS. The act defines "provider" as an operator with a Medicaid provider agreement. "Operator" is defined by the act as a person or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.

A provider agreement was required by prior law to contain a provision under which ODJFS agreed to make payments to the nursing facility or ICF/MR for patients eligible for services under the Medicaid program. The act requires instead that the provider agreement include a provision under which ODJFS agrees to make payments to a provider for Medicaid-covered services the nursing facility or ICF/MR provides to a resident who is a Medicaid recipient.

With a certain exception, a provider agreement is required to include any part of a nursing facility or ICF/MR that meets Medicaid certification standards. Continuing law provides that a provider agreement is not required, unless otherwise required by federal law, to include licensed nursing home beds that a nursing facility adds during the period beginning July 1, 1987, and ending July 1, 1993. The act establishes an exception for beds in an ICF/MR that are designated for respite care under a Medicaid waiver program. This exception too is limited to the extent permitted by federal law.

¹⁵⁵ *The previous provider would have had to file the previous provider's next Medicaid cost report within 90 days after the end of the calendar year unless granted a 14-day extension.*

The act provides that an operator of a nursing facility or ICF/MR may enter into Medicaid provider agreements for more than one nursing facility or ICF/MR.

Nursing home franchise permit fee

(R.C. 3721.50, 3721.51, 3721.511 (repealed), 3721.52, 3721.541, 3721.56, 3721.561, 3721.58, 5111.20, 5111.235, and 5111.266)

Nursing homes and hospitals with skilled nursing facility, long-term care, or nursing home beds are required to pay an annual franchise permit fee. For fiscal years 2003 through 2005, the fee was \$4.30 multiplied by the product of (1) the number of the nursing home's beds or hospital's skilled nursing facility, long-term care, or nursing home beds and (2) the number of days in the fiscal year for which the fee is imposed.

Fee increased for FY 2006 and 2007. Prior law provided that the fee was to be reduced to \$1 per bed per day starting in fiscal year 2006. The act increases the fee to \$6.25 for fiscal years 2006 and 2007. It is reduced to \$1 starting in fiscal year 2008.

Uses of money collected from the franchise permit fee. The first \$1 collected from the franchise permit fee is required to be deposited into the Home and Community-Based Services for the Aged Fund. Money in that fund must be used to pay for the Medicaid program, including the PASSPORT waiver component, and the Residential State Supplement Program.

The remaining amount of the fee is required to be deposited into the Nursing Facility Stabilization Fund. Uncodified law formerly governed how money in that fund was to be used. ODJFS was required to use that money to (1) make Medicaid payments to nursing facilities, (2) make payments to each nursing facility for each Medicaid day in fiscal year 2005 in an amount equal to 76.74% of the franchise permit fee that the facility paid for fiscal year 2005 divided by the facility's inpatient days for calendar year 2003,¹⁵⁶ and (3) make payments to each nursing facility for fiscal year 2005 in an amount equal to \$2.25 per Medicaid day for the purpose of enhancing quality of care.

¹⁵⁶ "Medicaid days" is defined as all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the facility's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days. The definition of "inpatient days" is similar to the definition of "Medicaid days" except that it applies to all of a nursing facility's residents, regardless of whether they are a Medicaid recipient or private-pay patient.

The act codifies (places in the Revised Code) the law governing the use of the money in the Nursing Facility Stabilization Fund and provides for that money to be used to make Medicaid payments to nursing facilities.

The act requires that a provider of a nursing facility filing its Medicaid cost report with ODJFS report as a nonreimbursable expense the entire cost of the nursing facility's franchise permit fee.

Sanctions for failure to pay franchise permit fee. Continuing law authorizes ODJFS to penalize a nursing home or hospital that fails to pay the full amount of the franchise permit fee when due. The penalty is a 5% assessment on the amount overdue.

The act provides that, in addition to assessing the penalty, ODJFS may do either of the following:

(1) Withhold an amount equal to the amount overdue and penalty assessed from a Medicaid payment due the nursing facility or hospital until the nursing facility or hospital pays the fee and penalty.

(2) Terminate the nursing facility or hospital's Medicaid provider agreement.

The act provides that ODJFS may make the withholding without providing notice to the nursing facility or hospital and without conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).¹⁵⁷

Exemptions from the franchise permit fee. Certain nursing homes have been exempted from the nursing home franchise permit fee. Nursing homes operated by a county and nursing homes that are certified as an ICF/MR rather than a nursing facility are exempt.¹⁵⁸ The act eliminates exemptions for (1) the Widow's Home of Dayton, Ohio, Masonic Home of Springfield, and Holy Family Home of Parma and (2) any nursing home that is exempt from state income taxation as a home for the aged, exempt from federal income taxation under section 501 of the Internal Revenue Code, provides services for the life of each resident without regard to the resident's ability to continue to pay, and does not

¹⁵⁷ *The provision of the act authorizing ODJFS to withhold a Medicaid payment without notice or an adjudication raises the question of whether it may violate the 14th Amendment to the United States Constitution which prohibits states from depriving a person of life, liberty, or property without due process of law.*

¹⁵⁸ *ICFs/MR are subject to a different franchise permit fee. See "ICF/MR franchise permit fee" below.*

have a Medicaid provider agreement.¹⁵⁹ It provides, however, a new exemption for a nursing home maintained and operated by the Ohio Veteran's Home Agency.

ICF/MR franchise permit fee

(R.C. 5112.30, 5112.31, and 5112.341)

Continuing law imposes a franchise permit fee on each ICF/MR for the purpose of generating revenue for home and community-based services for individuals with mental retardation or a developmental disability. In fiscal year 2005, the amount of the fee was \$9.63 multiplied by the product of (1) the number of Medicaid-certified beds on the first day of May of the calendar year in which the fee was determined by (2) the number of days in the fiscal year beginning on the first day of July of the same calendar year.

Delay of adjustment for inflation. Ordinarily, ODJFS is required to adjust the fee for each fiscal year in accordance with a composite inflation factor established in rules. The act provides that the fee is to remain at \$9.63 per bed per day for fiscal years 2006 and 2007 and adjusted in accordance with the composite inflation factor for subsequent fiscal years.

Sanctions for failure to pay franchise permit fee. Continuing law authorizes ODJFS to penalize an ICF/MR that fails to pay the full amount of the franchise permit fee when due. The penalty is a 5% assessment on the amount overdue.

The act provides that, in addition to assessing the penalty, ODJFS may do either of the following:

(1) Withhold an amount equal to the amount overdue and penalty assessed from a Medicaid payment due the ICF/MR until the ICF/MR pays the fee and penalty.

(2) Terminate the ICF/MR's Medicaid provider agreement.

The act provides that ODJFS may make the withholding without providing notice to the ICF/MR and without conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).¹⁶⁰

¹⁵⁹ ODJFS was permitted to limit the number of nursing homes that qualified for an exemption on the basis of meeting those requirements. The limitation could be imposed to ensure that the franchise permit fee satisfied a federal requirement that the fee be generally redistributive.

Nursing Facility Reimbursement Study Council abolished

(R.C. 5111.34 (repealed); Sections 403.05 and 403.06)

The act abolishes the Nursing Facility Reimbursement Study Council. The Council had been required to review, on an ongoing-basis, the system for reimbursing nursing facilities under Medicaid. The Council's membership included state legislators, state agency directors, and representatives of Medicaid recipients and nursing home organizations.¹⁶¹

Ohio Veteran's Home Agency nursing facility beds

(R.C. 5111.21)

The act provides that the Ohio Veteran's Home Agency is not required to qualify all of the Medicaid-certified beds in a nursing facility it maintains and operates in the Medicare program.

Change of operator, closure, and voluntary termination and withdrawal

The act eliminates a requirement that the owner of a nursing facility or ICF/MR operating under a Medicaid provider agreement provide written notice to ODJFS at least 45 days before entering into a contract of sale for the facility or voluntarily terminating participation in Medicaid. In the place of that requirement, the act establishes new requirements for a nursing facility or ICF/MR that undergoes a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The new requirements do not apply, however, to a nursing facility or ICF/MR that undergoes a facility closure, voluntary termination, voluntary withdrawal of participation, or change of operator before October 1, 2005, if the exiting operator provided written notice to ODJFS before July 1, 2005.

¹⁶⁰ *The provision of the act authorizing ODJFS to withhold a Medicaid payment without notice or an adjudication may raise the question of whether it violates the 14th Amendment to the United States Constitution which prohibits states from depriving a person of life, liberty, or property without due process of law.*

¹⁶¹ *The act, in addition to removing the Council from the list of entities scheduled to be sunset on December 31, 2010, unless renewed by the General Assembly, makes a technical change in that list by removing a duplicate reference to the Consumer Advisory Committee to the Rehabilitation Services Commission.*

Change of operator

(R.C. 5111.65)

A change of operator occurs when an entering operator becomes the operator of a nursing facility or ICF/MR in the place of the exiting operator.¹⁶² Actions that constitute a change of operator include the following:

(1) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(2) A transfer of all the exiting operator's ownership interest in the operation of the nursing facility or ICF/MR to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the facility is also transferred;

(3) A lease of the nursing facility or ICF/MR to the entering operator or the exiting operator's termination of the exiting operator's lease;

(4) If the exiting operator is a partnership, dissolution of the partnership;

(5) If the exiting operator is a partnership, a change in composition of the partnership unless the change does not cause the partnership's dissolution under state law or the partners agree that the change does not constitute a change in operator;

(6) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

The following, alone, do not constitute a change of operator:

¹⁶² The act defines "entering operator" as the individual or private or governmental entity that will become the operator of a nursing facility or ICF/MR when a change of operator occurs. "Exiting operator" is defined as (1) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a change of operator, (2) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a facility closure, (3) an operator of an ICF/MR that is undergoing or has undergone a voluntary termination, or (4) an operator of a nursing facility that is undergoing or has undergone a voluntary withdrawal of participation. The "operator" is the individual or private or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.

(1) A contract for an entity to manage a nursing facility or ICF/MR as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(2) A change of ownership, lease, or termination of a lease of real or personal property associated with a nursing facility or ICF/MR if an entering operator does not become the operator in place of an exiting operator;

(3) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stocks, if the same corporation continues to be the operator.

Facility closure

(R.C. 5111.65)

The act defines "facility closure" as discontinuance of the use of the building, or part of the building, that houses the facility as a nursing facility or ICF/MR that results in the relocation of all of the facility's residents. A facility closure occurs regardless of any of the following:

(1) The operator completely or partially replacing the facility by constructing a new facility or transferring the facility's license to another facility;

(2) The facility's residents relocating to another of the operator's facilities;

(3) Any action the Department of Health takes regarding the facility's certification under federal Medicaid law that may result in the transfer of part of the facility's survey findings to another of the operator's facilities;

(4) Any action the Department of Health takes regarding the facility's license as a nursing home;

(5) Any action the Department of Mental Retardation and Developmental Disabilities takes regarding the facility's license as a residential facility.

The act provides that a facility closure does not occur if all of the nursing facility or ICF/MR's residents are relocated due to an emergency evacuation and one or more of the residents return to a Medicaid-certified bed in the nursing facility or ICF/MR not later than 30 days after the evacuation occurs.

Voluntary termination and withdrawal of participation

(R.C. 5111.65)

The act provides that a voluntary termination is an operator's voluntary election to terminate the participation of an ICF/MR in the Medicaid program but to continue to provide service of the type provided by a residential facility for individuals with mental retardation or a developmental disability. "Voluntary withdrawal of participation" is defined as an operator's voluntary election to terminate the participation of a nursing facility in the Medicaid program but to continue to provide service of the type provided by nursing facilities.

Notice of facility closure or voluntary termination or withdrawal

(R.C. 3721.19, 5111.65, and 5111.66)

The act requires an exiting operator or owner¹⁶³ of a nursing facility or ICF/MR participating in the Medicaid program to provide ODJFS written notice of a facility closure, voluntary termination, or voluntary withdrawal of participation. The notice is due not less than 90 days before the effective date of the closure or voluntary termination or withdrawal. The effective date of a facility closure is the last day that the last of the nursing facility or ICF/MR residents resides in the facility. The effective date of a voluntary termination is the day the ICF/MR ceases to accept Medicaid patients. The effective date of a voluntary withdrawal of participation is the day the nursing facility ceases to accept new Medicaid patients other than the individuals who reside in the nursing facility on the day before the effective date of the voluntary withdrawal.

The notice to ODJFS must include all of the following:

(1) The name of the exiting operator and, if any, the exiting operator's authorized agent;

¹⁶³ *The act defines "owner" as an individual or private or governmental entity that has at least 5% ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding a nursing facility or ICF/MR: (1) the land on which the facility is located, (2) the structure in which the facility is located, (3) any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the facility is located, or (4) any lease or sublease of the land or structure on or in which the facility is located. "Owner" does not mean a holder of a debenture or bond related to the nursing facility or ICF/MR and purchased at public issue or a regulated lender that has made a loan related to the facility unless the holder or lender operates the facility directly or through a subsidiary.*

(2) The name of the nursing facility or ICF/MR that is the subject of the written notice;

(3) The exiting operator's Medicaid provider agreement number for the nursing facility or ICF/MR that is the subject of the written notice;

(4) The effective date of the closure or voluntary termination or withdrawal;

(5) The signature of the exiting operator's or owner's representative.

Notice of change of operator

(R.C. 5111.65 and 5111.67)

An exiting operator or owner and entering operator are required to provide ODJFS written notice of a change of operator if the nursing facility or ICF/MR participates in the Medicaid program and the entering operator seeks to continue the facility's participation. The written notice must be provided to ODJFS not later than 45 days before the effective date of the change of operator if the change does not entail the relocation of residents. The written notice is due not later than 90 days before the effective date of the change of operator if the change entails the relocation of residents. The effective date of a change of operator is the day the entering operator becomes the operator. The notice must include all of the following:

(1) The name of the exiting operator and, if any, the exiting operator's authorized agent;

(2) The name of the nursing facility or ICF/MR that is the subject of the change of operator;

(3) The exiting operator's Medicaid provider agreement number for the facility that is the subject of the change of operator;

(4) The name of the entering operator;

(5) The effective date of the change of operator;

(6) The manner in which the entering operator becomes the facility's operator, including through sale, lease, merger, or other action;

(7) If the manner in which the entering operator becomes the facility's operator involves more than one step, a description of each step;



(8) Written authorization from the exiting operator or owner and entering operator for ODJFS to process a Medicaid provider agreement for the entering operator;

(9) The signature of the exiting operator's or owner's representative.

The entering operator is required to include a completed application for a Medicaid provider agreement with the notice. Also, the entering operator must attach all the proposed or executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the facility's change of operator.

Determination of potential Medicaid debt

(R.C. 5111.68)

On notification of a facility closure, voluntary termination, voluntary withdrawal of participation, or change of operator, ODJFS is required by the act to determine the amount of any overpayments made under Medicaid to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts the exiting operator owes or may owe to ODJFS and the United States Centers for Medicare and Medicaid Services (CMS). In making the determination, ODJFS is required to include all of the following that ODJFS determines is applicable:

(1) Refunds for excess depreciation due to ODJFS under current law and any other amount ODJFS properly finds to be due after a final fiscal audit;

(2) Interest owed to ODJFS and CMS;

(3) Final civil monetary and other penalties for which all right of appeal has been exhausted;

(4) Money owed ODJFS and CMS from any outstanding final fiscal audit, including a final fiscal audit for the last fiscal year or portion thereof in which the exiting operator participated in Medicaid.

If ODJFS is unable to make the determination before the effective date of the entering operator's provider agreement or the effective date of the closure or voluntary termination or withdrawal, ODJFS is required to make a reasonable estimate of the overpayments and other debts for the period.¹⁶⁴ ODJFS must make

¹⁶⁴ See "**Provider agreement with entering operator**" below.

the estimate using information available to ODJFS, including prior determinations of overpayments and other debts.

Withholdings

(R.C. 5111.25 (5111.27), 5111.251 (repealed), and 5111.681)

Under prior law, ODJFS was required to provide for a bank, trust company, or savings and loan association to hold in escrow the amount of the last two monthly Medicaid payments to a nursing facility or ICF/MR before a sale or termination of participation in Medicaid or, if the owner failed, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first two monthly payments made to the facility after ODJFS learned of the contract. However, if the amount the owner would be required to refund to ODJFS was likely to be less than the amount of the two monthly payments otherwise put into escrow, ODJFS had to do either of the following:

(1) Withhold the amount of the owner's last monthly payment or, if the owner failed, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first monthly payment made after ODJFS learned of the contract;

(2) If the owner owned other facilities that participated in Medicaid, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded.

The act requires, with an exception, that ODJFS, instead, withhold the greater of the following from payment due an exiting operator under Medicaid:

(1) The total amount of any Medicaid overpayments to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts, including any unpaid penalties, the exiting operator owes or may owe to ODJFS and CMS under Medicaid;

(2) An amount equal to the average amount of monthly payments to the exiting operator under Medicaid for the 12-month period immediately preceding the month that includes the last day the exiting operator's provider agreement is in effect or, in the case of a voluntary withdrawal of participation, the effective date of the voluntary withdrawal.

The act permits ODJFS to choose to not make the withholding if an entering operator (1) enters into a nontransferable, unconditional, written agreement with ODJFS to pay ODJFS any debt the exiting operator owes ODJFS

under Medicaid and (2) provides ODJFS a copy of the entering operator's balance sheet that assists ODJFS in determining whether to make the withholding.

Final cost report

(R.C. 5111.29 (5111.30), 5111.682, 5111.683, and 5111.684)

The act requires an exiting operator to file with ODJFS a cost report unless ODJFS waives this requirement.¹⁶⁵ The cost report is due not later than 90 days after the last day the exiting operator's Medicaid provider agreement is in effect or, if the exiting operator voluntarily withdraws from Medicaid participation, the effective date of the voluntary withdrawal. The cost report must cover the period that begins with the day after the last day covered by the operator's most recent previous cost report and ends on the last day the operator's provider agreement is in effect or the effective date of the voluntary withdrawal.¹⁶⁶ The cost report must include, as applicable, the sale price of the nursing facility or ICF/MR, a final depreciation schedule that shows which assets are transferred to the buyer and which assets are not, and any other information ODJFS requires.

All payments under Medicaid for the period the cost report covers are deemed overpayments until the date ODJFS receives the properly completed cost report if the exiting operator fails to file the cost report within the required time. ODJFS is permitted to impose on the exiting operator a penalty of \$100 for each calendar day the properly completed cost report is late. The penalty is subject to an adjudication conducted in accordance with the Administrative Procedure Act.

The act prohibits ODJFS from providing an exiting operator final payment under Medicaid until ODJFS receives all properly completed cost reports required by continuing law and the act.

¹⁶⁵ *The act gives ODJFS sole discretion over whether to waive the cost report requirement for an exiting operator.*

¹⁶⁶ *Continuing law requires nursing facilities and ICFs/MR to file with ODJFS an annual cost report covering the previous calendar year or the portion of the previous calendar year during which the facility participated in Medicaid. The act eliminates provisions of the law governing the cost report that concern Medicaid reimbursement rates for nursing facilities and ICFs/MR.*

Determination of actual Medicaid debt

(R.C. 5111.29 (5111.30) and 5111.685)

ODJFS is required to determine the actual amount of debt an exiting operator owes ODJFS under Medicaid by completing all final fiscal audits not already completed and performing all other appropriate actions ODJFS determines to be necessary. ODJFS must issue a debt summary report on the actual amount of debt not later than 90 days after the date the exiting operator files the properly completed cost report required by the act with ODJFS, or, if ODJFS waives the cost report requirement, 90 days after the date ODJFS waives the cost report. The report must include ODJFS's findings and the amount of debt ODJFS determines the exiting operator owes ODJFS and CMS under Medicaid.¹⁶⁷

Release of withholdings

(R.C. 5111.686 and 5111.687)

The act establishes time frames for ODJFS to release the amount withheld from an exiting operator. ODJFS must release the withholdings 91 days after the date the exiting operator files a properly completed cost report required by the act unless ODJFS issues a report on the exiting operator's actual Medicaid debt not later than 90 days after the date the cost report is filed. If the cost report is waived, the release must be made 91 days after the date ODJFS issues the waiver unless ODJFS issues the report on actual Medicaid debt not later than 90 days after the date ODJFS waives the cost report. If ODJFS issues the report on actual Medicaid debt not later than 90 days after the cost report is filed or 90 days after the date the cost report is waived, the release must be made not later than 30 days after the exiting operator agrees to a final fiscal audit resulting from the report. The amount released is to be reduced by any amount the exiting operator owes ODJFS and CMS under Medicaid.

¹⁶⁷ Only the parts of the report concerning the following are subject to an adjudication conducted in accordance with the Administrative Procedure Act: (1) any adverse finding that ODJFS makes as the result of a final fiscal audit, (2) adverse findings that result from an exception review of resident assessment data submitted after the effective date of a facility's rate that is based on the assessment data, (3) overpayments deemed to exist due to a late cost report, (4) penalties for failure to file the cost report required by the act; failure to provide written notice of sale or voluntary termination of participation in Medicaid pursuant to law in effect before the effective date of this part of the act; or failure to furnish documentation requested during an audit within 60 days of the request, and (5) penalties imposed by rules.

ODJFS is permitted, at its sole discretion, to release a withholding if an exiting operator submits to ODJFS written notice of a postponement of a change of operator, facility closure, or voluntary termination or withdrawal and the transactions leading to that action are postponed for at least 30 days but less than 90 days after the date originally proposed. ODJFS is required to release a withholding if the exiting operator submits to ODJFS written notice of a cancellation or postponement of a change of operator, facility closure, or voluntary termination or withdrawal and transactions leading to that action are canceled or postponed for more than 90 days after the date originally proposed.¹⁶⁸

Provider agreement with entering operator

(R.C. 5111.671, 5111.672, 5111.673, 5111.674, and 5111.675)

ODJFS is permitted by the act to enter into a Medicaid provider agreement with an entering operator becoming the operator of a nursing facility or ICF/MR pursuant to a change of operator if the entering operator (1) provides ODJFS a properly completed written notice of the change of operator, (2) furnishes to ODJFS copies of all the fully executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the change of operator, and (3) is eligible for Medicaid payments.¹⁶⁹

The exiting operator is to be considered the operator of the nursing facility or ICF/MR for purposes of Medicaid, including Medicaid payments, until the effective date of the entering operator's provider agreement. The entering operator's provider agreement is to go into effect at 12:01 a.m. on the effective date of the change of operator if ODJFS receives the properly completed written notice of the change of operator within the required time and the entering operator furnishes to ODJFS the required materials not later than ten days after the effective date of the change of operator. The provider agreement is to go into effect at 12:01 a.m. on a date ODJFS determines if either or both of those times frames are not met. If ODJFS is to determine the date the provider agreement is to go into effect, ODJFS must make the determination as follows:

¹⁶⁸ *After ODJFS receives a written notice regarding cancellation or postponement of a change of operator, facility closure, or voluntary termination or withdrawal, new written notice of a change of operator, closure, or voluntary termination or withdrawal is required if that action is commenced at a future time.*

¹⁶⁹ *To be eligible for Medicaid payments, a nursing facility or ICF/MR operator must apply for and maintain a valid license to operate, if so required by law, and comply with all applicable state and federal laws.*

(1) The effective date must give ODJFS sufficient time to process the change of operator, assure no duplicate payments are made, make a required withholding, and withhold the final payment to the exiting operator until 180 days after the exiting operator submits to ODJFS a properly completed cost report or ODJFS waives the requirement to submit the cost report.¹⁷⁰

(2) The effective date must not be earlier than the later of the effective date of the change of operator or the date that the exiting operator or owner and entering operator comply with the requirement to submit a notice of the change of operator.

(3) The effective date must not be later than a certain number of days after the later of the dates under (2) above. The number of days is 45 if the change of operator does not entail the relocation of residents. The number of days is 90 if the change entails the relocation of residents.

The entering operator must do all of the following:

(1) Comply with all applicable federal laws;

(2) Comply with current law governing provider agreements and all other applicable state laws;

(3) Comply with all the terms and conditions of the exiting operator's provider agreement, including, but not limited to, any plan of correction, health and safety standards, ownership and financial interest disclosure requirements of federal regulations, civil rights requirements of federal regulations, additional requirements ODJFS imposes, and any sanctions relating to remedies for violation of the provider agreement.

If the entering operator does not agree to a provider agreement that includes all the terms and conditions of the exiting operator's provider agreement, the entering operator and ODJFS may enter into a provider agreement under continuing law rather than under the act. The nursing facility or ICF/MR must obtain certification from the Department of Health and the effective date of the provider agreement cannot precede the date of certification, the effective date of the change of operator, or the date the properly completed written notice of the change of operator is submitted to ODJFS.

¹⁷⁰ See "Withholdings" and "Final cost report" above.

Rate adjustment following change of operator

(R.C. 5111.676)

The act gives the Director of ODJFS permission to adopt rules governing adjustments to the Medicaid reimbursement rate for a nursing facility or ICF/MR that undergoes a change of operator. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act. No rate adjustment resulting from a change of operator may be effective before the effective date of the entering operator's Medicaid provider agreement.

Compliance with federal law on voluntary withdrawal

(R.C. 5111.661)

An operator is required by the act to comply with federal law regarding restrictions on transfers or discharges of nursing facility residents if the operator's nursing facility undergoes a voluntary withdrawal of participation. That federal law provides that a voluntary withdrawal is not an acceptable basis for the transfer or discharge of residents residing in the facility on the day before the effective date of the voluntary withdrawal and the facility's Medicaid provider agreement is to continue in effect for such residents.¹⁷¹ Additionally, the federal law requires that the facility provide notice to each individual who begins to reside in the facility after the voluntary withdrawal that the facility does not participate in Medicaid with respect to that resident and the facility may transfer or discharge the resident from the facility when the resident is unable to pay the charges of the facility.

Medicaid care management

Background

Continuing law requires ODJFS to establish a care management system as part of the Medicaid program. ODJFS is required to implement the system in some or all counties and must designate the Medicaid recipients who are required or permitted to participate. Under the system, ODJFS may require or permit participants to obtain health care services from providers designated by ODJFS and through managed care organizations under contract with ODJFS.

¹⁷¹ *Because the Medicaid provider agreement continues in effect for the residents in the facility before the voluntary withdrawal goes into effect, the facility continues to be subject to federal Medicaid laws regarding those residents as long as they continue to reside in the home. (42 U.S.C.A. 1396r(c)(2)(F).)*

Care management annual report

(R.C. 5111.16(D))

The act requires ODJFS to prepare an annual report on the care management system. The report must address ODJFS's ability to implement the various components of the system, including the changes to the system required by the act.¹⁷² Each annual report must be submitted to the General Assembly, with the first report due by October 1, 2007.

Care management working group

(R.C. 5111.161)

The act creates the Medicaid Care Management Working Group, consisting of the following members:

(1) Three individuals representing Medicaid health insuring corporations, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor;

(2) One individual representing programs that provide enhanced care management services, appointed by the Governor;

(3) Four individuals representing health care professional and trade associations, appointed as follows:

--One representative of the American Academy of Pediatrics, appointed by the President of the Senate;

--One representative of the American Academy of Family Physicians, appointed by the Speaker of the House of Representatives;

--One representative of the Ohio State Medical Association, appointed by the President of the Senate;

--One representative of the Ohio Hospital Association, appointed by the Speaker of the House of Representatives.

¹⁷² *Although the Governor vetoed a provision of the act that would have required ODJFS to develop a pilot program for the care management of chronically ill children, the Governor failed to veto a provision requiring that ODJFS's annual report on the care management system address the conduct of the chronically ill children pilot program. (See "**Care management pilot program for chronically ill children**" below.)*

(4) One individual representing behavioral health professional and trade associations, appointed by the Speaker of the House of Representatives;

(5) Two individuals representing consumer advocates, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

(6) One individual representing county departments of job and family services, appointed by the President of the Senate;

(7) Three individuals representing the business community, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor;

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

(9) The Director of Health or the Director's designee;

(10) The Director of Aging or the Director's designee.

The members of the Working Group are to serve at the pleasure of their appointing authorities. Vacancies are to be filled in the manner provided for original appointments.

The act requires the Working Group to develop guidelines for ODJFS to consider when entering into contracts with managed care organizations for purposes of the Medicaid care management system. The Working Group must consult regularly with the Departments of Insurance, Alcohol and Drug Addiction Services, Mental Health, Mental Retardation and Developmental Disabilities, and the Rehabilitation Services Commission.

In developing the guidelines for managed care contracts, the Working Group is required to do all of the following:

(1) Examine the best practice standards used in managed care programs and other health care and related systems to maximize patient and provider satisfaction, maintain quality of care, and obtain cost-effectiveness;

(2) Consider the most effective means of facilitating the expansion of the care management system and increasing consistency within the system;

(3) Make recommendations for coordinating the regulatory relationships involved in the Medicaid care management system;



(4) Make recommendations for improving the resolution of contracting issues among the providers involved in the care management system;

(5) Make recommendations that ODJFS may consider when developing and implementing a financial incentive program to improve and reward positive health outcomes through care management contracts. In making recommendations for the financial incentive program, the Working Group must include all of the following:

--Standards and procedures by which care management contractors may receive financial incentives for positive health outcomes measured on an individual basis;

--Specific measures of positive health outcomes, particularly among individuals with high-risk health conditions;

--Criteria for determining what constitutes a completed health outcome;

--Methods of funding the program without requiring an increase in appropriations.

The act requires the Working Group to prepare an annual report on its activities. The report must be submitted to the President of the Senate, Speaker of the House of Representatives, and Governor. The report is to include any findings and recommendations the Working Group considers relevant to its duties. The initial report must be completed not later than December 31, 2005, with subsequent reports to be submitted each year by the last day of December.

Care management reimbursement rates for noncontracting hospitals

(R.C. 5111.162)

Under the act, when a participant in the Medicaid care management system is enrolled in a Medicaid managed care organization and the organization refers the participant to a hospital that participates in Medicaid but is not under contract with the organization, the hospital is required to provide the service for which the referral was made and must accept from the organization, as payment in full, the amount derived from the reimbursement rate used by ODJFS to reimburse other hospitals of the same type for providing the same service to a Medicaid recipient who is not enrolled in a Medicaid managed care organization. An exception to the required acceptance of this "fee-for-service" reimbursement rate applies to a hospital, if all of the following are the case:

(1) The hospital is located in a county in which participants in the care management system are required before January 1, 2006, to be enrolled in a Medicaid managed care organization that is a health insuring corporation;

(2) The hospital has entered into a contract before January 1, 2006, with at least one health insuring corporation serving the participants who are required to be enrolled;

(3) The hospital remains under contract with at least one health insuring corporation serving participants in the care management system who are required to be enrolled in a health insuring corporation.

The Director of ODJFS is required to adopt rules specifying the circumstances under which a Medicaid managed care organization is permitted to refer a patient to a hospital that is not under contract with the organization. The Director may adopt any other rules necessary to implement the act's provisions on reimbursement of noncontracting hospitals. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Mandatory managed care for covered families and children

(R.C. 5111.16(B)(1))

In the case of Medicaid recipients in the category ODJFS identifies as "covered families and children," the act requires the care management system to be implemented in all counties and requires ODJFS to designate all individuals included in the category for participation, other than individuals included in one or more of the groups that cannot be made subject to mandatory managed care according to federal regulations. ODJFS must designate the participants not later than January 1, 2006. Not later than December 31, 2006, ODJFS must ensure that all participants are enrolled in Medicaid-contracting health insuring corporations.

Mandatory managed care for the aged, blind, and disabled

(R.C. 5111.16(B)(2))

ODJFS must designate as care management participants all persons who receive Medicaid on the basis of being aged, blind, or disabled. The requirement, however, does not apply to the following: (1) persons under age 21, (2) institutionalized persons,¹⁷³ (3) persons eligible for Medicaid by spending down income or resources, (4) persons dually eligible for Medicaid and Medicare, and

¹⁷³ *The act does not specify the meaning of "institutionalized."*

(5) persons to the extent they are receiving Medicaid services through a waiver component of the program.

The act specifies that the care management system for aged, blind, and disabled persons must be implemented in all counties. It also specifies that ODJFS must ensure, beginning not later than December 31, 2006, that the designated participants enroll in health insuring corporations under contract with ODJFS.

Behavioral health services

(R.C. 5111.16(B)(3))

The act specifies that alcohol, drug addiction, and mental health services covered by Medicaid cannot be included in any component of the care management system when the nonfederal share of the cost of those services is provided by a board of alcohol, drug addiction, and mental health services or a state agency other than ODJFS. The recipients of the services, however, may be designated as participants in the system for purposes of obtaining other Medicaid-covered services.

Care management pilot program for chronically ill children

(R.C. 5111.163)

The Governor vetoed a provision that would have required ODJFS to create a Medicaid care management pilot program for chronically ill children. The purpose of the pilot program would have been to determine whether occurrences of acute illnesses and hospitalizations among chronically ill children can be prevented or reduced by establishing a medical home for these children where care is administered proactively and in an accessible, continuous, family-centered, coordinated, and compassionate setting. ODJFS would have been required to implement the program not later than October 1, 2006, or later if ODJFS had not received federal approval by that date. The pilot program would have run until October 1, 2008, unless ODJFS determined that the care management system was not a cost-effective means of providing Medicaid services to chronically ill children or the combined state and federal cost of the program reached \$3 million. The pilot was to operate in at least three counties, with Hamilton and Muskingum counties given priority.

Prompt payment requirements for health insuring corporations covering Medicaid recipients

(R.C. 3901.3814 and 5101.93)

Health insuring corporations providing coverage to Medicaid recipients have been exempt from statutes that would require them to comply with prompt payment laws applicable to other health insuring corporations.

Under the act, the provision of law excluding health insuring corporations that provide coverage to Medicaid recipients from the prompt payment requirements may be eliminated for claims submitted electronically or non-electronically. The act requires ODJFS to determine whether a waiver of federal Medicaid requirements is necessary to implement the elimination of the exclusion. If a waiver is necessary, ODJFS is required to apply to the U.S. Secretary of Health and Human Services for the waiver.

If ODJFS determines a waiver is unnecessary or receives approval of the waiver, ODJFS is required to notify the Department of Insurance so that the prompt payment requirements can be implemented. The act provides that implementation must be effective 18 months after the notice is sent.

ODJFS is also required by the act to give notice to each health insurance corporation providing coverage to Medicaid recipients of the prompt payment requirements and the implementation date of the provisions.

Managed care grievance process

(R.C. 5111.177)

The act requires ODJFS, when it contracts with a health insuring corporation under the Medicaid care management system, to require the health insuring corporation to provide a grievance process for Medicaid recipients in accordance with federal regulations.

Independent medical reviews

(R.C. 5101.35(H))

Continuing law permits a Medicaid recipient to appeal to ODJFS a decision or order made by a Medicaid managed care organization. The act provides that if a recipient is appealing a denial of medical services based on lack of medical necessity or other clinical issues regarding coverage by the organization, the person hearing the appeal may order an independent medical review on determining that a review is necessary. The review must be performed by a health

care professional with appropriate clinical expertise in treating the recipient's condition or disease. ODJFS is required to pay the costs associated with the review. The review is to be part of the record of the hearing and given appropriate evidentiary consideration.

Performance-based financial incentives in managed care contracts

(R.C. 5111.17)

The act requires ODJFS to develop and implement a financial incentive program to improve and reward positive health outcomes through the Medicaid contracts entered into with managed care organizations. ODJFS may take into consideration the recommendations made by the act's Medicaid Care Management Working Group. The Director of ODJFS is permitted to adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) to implement the program.

Mandated coverage of respiratory virus drugs

(Section 206.66.41)

The Governor vetoed a provision that would have required ODJFS, when entering into a Medicaid contract with a health insuring corporation, to require the health insuring corporation to provide coverage of prescription drugs that protect against respiratory syncytial virus. The coverage was to be applicable to Medicaid recipients enrolled in the health insuring corporation who, as an infant born premature or other pediatric patient, were at risk for respiratory syncytial virus. In providing the coverage, the health insuring corporation would have been required to (1) cover the drugs in at least the same amount, duration, and scope as the Medicaid program's coverage of the drugs under its fee-for-service system and (2) establish access requirements for the drugs that are less or no more restrictive than the access requirements for the drugs under the fee-for-service system. This provision would have been applicable in fiscal years 2006 and 2007 only.

Medicaid managed care franchise permit fee

(R.C. 5111.176)

The act establishes a temporary fee to be charged to Medicaid health insuring corporations (HICs) and procedures for enforcing the fee. It specifies how the fee is to be used.

Franchise permit fee. The act requires each Medicaid HIC¹⁷⁴ to pay a franchise permit fee for each calendar quarter occurring between January 1, 2006, and June 30, 2007. The fee is equal to 4.5% of the managed care premiums the HIC receives in the applicable calendar quarter, excluding the amount of any managed care premiums returned or refunded to enrollees, members, or premium payers. The managed care premium amount that is to be used in calculating the fee includes any premium payment, capitation payment, or other payment the Medicaid HIC receives for providing, or arranging for the provision of, health care services to its members or enrollees in Ohio.

ODJFS is authorized to adopt rules decreasing the fee, or increasing the fee to no more than 6% of managed care premiums received. However, the act requires ODJFS to reduce or terminate collection of the fee if it determines that (1) the reduction or termination is required to comply with federal law or (2) the fee does not qualify as a state share of Medicaid expenditures eligible for federal financial participation.

The fee is to be paid on or before the 30th day following the quarter to which the fee applies. When submitting the fee, the Medicaid HIC must file a report that includes all information required by ODJFS and any necessary supporting documentation.

The Director of ODJFS is authorized by the act to adopt rules in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.) to implement and administer the fee program.

Audits. Under the act, ODJFS may audit the records of any Medicaid HIC to determine whether the HIC is in compliance with the fee requirements. An audit pertaining to a particular calendar quarter may be conducted at any time during the five years following the date the fee was due.

Penalties. The act provides that any HIC that fails to pay the franchise permit fee is subject to any or all of the following penalties:

(1) A monetary penalty of \$500 for each day any part of the fee remains unpaid, not to exceed an amount equal to 5% of the total fee due for the calendar quarter;

(2) Withholdings from future managed care premiums paid by Medicaid;

¹⁷⁴ The act defines "Medicaid health insuring corporation" as a HIC that holds a certificate of authority as a HIC under Ohio law and has entered into a contract with ODJFS to serve Medicaid recipients.

- (3) Termination of the HIC's Medicaid provider agreement.

None of these penalties replaces the requirement that the HIC pay the franchise permit fee due.

Enforcement procedures. The act authorizes ODJFS to withhold future managed care premiums from any Medicaid HIC that fails to pay the franchise permit fee until the fee is paid. ODJFS may withhold an amount equal to the past due franchise fee and does not need to provide notice to the HIC of the withheld premiums.

Under the act, ODJFS may commence actions to terminate the Medicaid provider agreement between ODJFS and the HIC for the following reasons:

- (1) Failure to pay the franchise permit fee;
- (2) Failure to pay a penalty imposed for failing to pay the fee;
- (3) Failure to cooperate with an audit.

Adjudication procedures. The act provides two procedures for resolving disputes between ODJFS and a Medicaid HIC. First, the HIC may request a hearing in accordance with the Administrative Procedure Act if the dispute arises from either of the following:

- (1) ODJFS has determined that the HIC owes an additional franchise permit fee or penalty as the result of an audit;

- (2) ODJFS is proposing to terminate the HIC's Medicaid provider agreement and the law regarding Medicaid provider agreements requires a hearing.¹⁷⁵

For disputes that do not require a hearing, the HIC may ask ODJFS to reconsider any dispute related to the franchise permit fee. Once ODJFS reconsiders its decision, that decision is not subject to appeal. When conducting a reconsideration, ODJFS must, at a minimum, do the following:

- (1) Specify the time frame within which the HIC must act in order to exercise its opportunity for reconsideration;

¹⁷⁵ Generally, ODJFS must provide a hearing when it proposes to terminate a Medicaid provider agreement. Under certain circumstances, a hearing is not required. These circumstances include when the provider has been found guilty or pled guilty to acts of criminal activity related to provision of Medicaid services or failure to maintain a license required to provide Medicaid services. (R.C. 5111.06.)

(2) Permit the HIC to present written arguments or other materials to support its position.

Managed care assessment fund. Under the act, the money collected from the franchise permit fee is to be credited to the Managed Care Assessment Fund. The act requires ODJFS to use the money to pay for Medicaid services, administrative costs, and contracts with Medicaid HICs.

Medicaid payments for graduate medical education costs

(R.C. 5111.19 and 5111.191)

Continuing law provides for ODJFS, through the Medicaid program, to reimburse providers who serve Medicaid recipients for the costs associated with graduate medical education. The amount of reimbursement is established by ODJFS in rules. A provider may be reimbursed for treatment of all Medicaid recipients, including recipients enrolled with a managed care organization under contract with ODJFS. The managed care organization can pay the provider, in which case ODJFS will include in its payment to the organization an amount sufficient to cover the costs of reimbursement. Alternatively, ODJFS can directly reimburse the provider for the costs of education. If ODJFS reimburses the provider, the provider cannot seek payment from the organization and the organization is not required to pay the provider for education costs.

The act allows ODJFS to deny payment to a hospital for direct graduate medical education costs associated with the delivery of services to any Medicaid recipient if the hospital refuses, without good cause, to contract with a managed care organization that serves participants in the Medicaid care management system who are required to be enrolled in a managed care organization and the organization serves the area in which the hospital is located. ODJFS must specify, in rule, what constitutes good cause.

The act provides an exception to ODJFS's authority to deny payment for direct graduate medical education cost if all of the following are the case:

(1) The hospital is located in a county in which participants in the care management system are required before January 1, 2006, to be enrolled in a Medicaid managed care organization that is a health insuring corporation;

(2) The hospital has entered into a contract before January 1, 2006, with at least one health insuring corporation serving the participants who are required to be enrolled;



(3) The hospital remains under contract with at least one health insuring corporation serving participants in the care management system who are required to be enrolled in a health insuring corporation.

Approval of Medicaid plan

(Section 206.66.51)

The act permits ODJFS to submit to the U.S. Secretary of Health and Human Services an amendment to the state Medicaid plan to implement the provision of law that would allow ODJFS to deny Medicaid payments for direct graduate medical education costs to hospitals for failure to contract with managed care organizations. On the Secretary's approval of the plan, ODJFS is authorized to implement the provision.

Supplemental Medicaid payment program for children's hospitals

(Section 206.66.79)

The act requires ODJFS to create a program under which it makes supplemental Medicaid payments to children's hospitals for inpatient services based on federal upper payment limits. ODJFS must apply for federal approval of a state Medicaid plan amendment to implement the program and must implement the program if federal approval is received. Under the program, ODJFS is required to pay children's hospitals the federally allowable supplemental payment for hospital discharges qualifying for the program in fiscal years 2006 and 2007. The amount used for the program cannot exceed \$6 million (state share) plus the corresponding federal match, if available.

General requirements for home and community-based services waivers

(R.C. 5111.851, 5111.852, 5111.853, 5111.854, and 5111.855)

The act establishes general requirements for Medicaid waivers that provide home and community-based services as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded (ICF/MR) services. The requirements are as follows:

(1) Only an individual who qualifies for a waiver is to receive the waiver's services.

(2) A level of care determination¹⁷⁶ must be made as part of the process of determining whether an individual qualifies for a waiver and must be made each year after the initial determination if, during such a subsequent year, the state agency or political subdivision administering the waiver determines there is a reasonable indication that the individual's needs have changed.

(3) A written plan of care or individual service plan based on an individual assessment of the services that an individual needs to avoid needing admission to a hospital, nursing facility, or ICF/MR must be created for each individual determined eligible for a waiver.

(4) Each individual determined eligible for a waiver must receive that waiver's services in accordance with the individual's level of care determination and written plan of care or individual service plan.

(5) No individual is to receive services under a waiver while the individual is a hospital inpatient or resident of a skilled nursing facility, nursing facility, or ICF/MR.

(6) No individual is to receive prevocational, educational, or supported employment services under a waiver if the individual is eligible for such services that are funded with federal funds provided under federal labor law regarding rehabilitation services or the federal Individuals with Disabilities Education Act.

(7) Safeguards must be taken to protect the health and welfare of individuals receiving services under a waiver, including safeguards established in rules governing waivers and safeguards established by licensing and certification requirements that are applicable to the providers of the waiver's services.

(8) No services are to be provided under a waiver by a provider that is subject to standards that federal law governing the Supplemental Security Income program requires be established if the provider fails to comply with the standards applicable to the provider.

(9) An individual determined to be eligible for a waiver, or such individual's representatives, must be informed of the waiver's services, including any choices that the individual or representative may make regarding the services, and given the choice of either receiving services under the waiver or, as appropriate, hospital, nursing facility, or ICF/MR services.

¹⁷⁶ *The act defines "level of care determination" as a determination of whether an individual needs the level of care provided by a hospital, nursing facility, or ICF/MR and whether the individual, if determined to need that level of care, would receive such services if not for a home and community-based services waiver.*

The act authorizes ODJFS to review and approve, modify, or deny written plans of care and individual service plans that the act requires be created for individuals determined eligible for a home and community-based services waiver. If a state agency or political subdivision contracts with ODJFS to administer a waiver and approves, modifies, or denies a written plan of care or individual service plan pursuant to the agency or subdivision's administration of the waiver, ODJFS is permitted to review the agency or subdivision's approval, modification, or denial and order the agency or subdivision to reverse or modify the approval, modification, or denial. ODJFS is to be granted full and immediate access to any records that ODJFS needs to implement these duties.

State agencies and political subdivisions that administer a home and community-based services waiver are required to maintain, for a period of time ODJFS must specify, financial records documenting the costs of services provided under the waiver. This includes records of independent audits. The state agency or political subdivision must make the financial records available on request to the United States Secretary of Health and Human Services, United States Comptroller General, and their designees.

The act provides that state agencies and political subdivisions administering a home and community-based services waiver are financially accountable for funds expended for services provided under the waiver.

Each state agency and political subdivision that contracts with ODJFS to administer a home and community-based services waiver, or one or more aspects of such a waiver, is required to provide ODJFS a written assurance that the agency or subdivision will not violate the act's requirements regarding such waivers.

ODJFS-administered Medicaid waivers

(R.C. 5111.856 and 5111.97 (5111.86))

The act repeals law that authorized ODJFS to submit a request to the United States Secretary of Health and Human Services to obtain waivers of federal Medicaid requirements that would otherwise be violated in the creation and implementation of two Medicaid home and community-based services programs to replace the Ohio Home Care Program.¹⁷⁷ The act provides instead that ODJFS may request federal approval to create and implement two or more Medicaid waiver programs under which home and community-based services are provided to individuals who need the level of care provided by a nursing facility or hospital. The requests may specify the maximum number of individuals who may be

¹⁷⁷ *The repeal is effective October 1, 2005.*

enrolled in each of the waivers included in the requests, the maximum amount the Medicaid program may expend each year for each individual enrolled in the waivers, and the maximum amount the Medicaid program may expend each year for all individuals enrolled in the waivers. If approved, ODJFS is to administer the waivers. ODJFS is permitted, after the first of any such waivers begins enrollment, to seek federal approval to cease enrolling additional individuals in the Medicaid Waiver component of the Ohio Home Care Program.

The act authorizes ODJFS to transfer an individual enrolled in an ODJFS-administered Medicaid waiver program to another ODJFS-administered Medicaid waiver program if the individual is eligible for the Medicaid waiver program and the transfer does not jeopardize the individual's health or safety. The transfer may be made from any ODJFS-administered Medicaid waiver program to any ODJFS-administered Medicaid waiver program, not just those the act authorizes. The transfers are to be done to the extent necessary for the efficient and economical administration of Medicaid waiver programs.

Medicaid waivers for individuals with autism or developmental delays or disabilities

(R.C. 5111.87)

Prior law authorized the Director of ODJFS to apply to the federal government for one or more Medicaid waivers under which home and community-based services are provided in the form of either or both of (1) early intervention services for children under age three that are provided or arranged by county boards of mental retardation and developmental disabilities and (2) therapeutic services for children who have autism and are under age six at the time of enrollment. The act provides instead that the Director may apply for one or more Medicaid waivers under which home and community-based services are provided in the form of (1) early intervention and supportive services for children under age three who have developmental delays or disabilities the Director determines are significant, (2) therapeutic services for children of any age who have autism, and (3) specialized habilitative services for individuals who are age 18 or older and have autism.

The act places limits on the waivers concerning therapeutic services for children with autism and specialized habilitative services for adults with autism. Neither such waiver may provide services that are available under another Medicaid waiver program. No waiver concerning therapeutic services for children with autism may provide services to an individual that the individual is eligible to receive through an individualized education program.

The act provides that the Director of Mental Retardation and Developmental Disabilities or Director of Health may request that the Director of ODJFS apply for one or more of the Medicaid waivers the act authorizes.¹⁷⁸

ICF/MR Conversion Pilot Program

(R.C. 5111.88 to 5111.8812)

ODJFS to seek federal waiver and amendment state plan

The act requires that the Director of ODJFS apply for a federal Medicaid waiver authorizing the ICF/MR Conversion Pilot Program under which intermediate care facilities for the mentally retarded (ICFs/MR), other than such facilities operated by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD),¹⁷⁹ may volunteer to convert from providing ICF/MR services to providing home and community-based services and individuals with MR/DD who are eligible for Medicaid-funded ICF/MR services may volunteer to receive instead home and community-based services. The Director is also required to amend the state Medicaid plan to receive federal authorization for the Director, beginning on the first day that the ICF/MR Conversion Pilot Program begins to be implemented, to refuse to enter into or amend a Medicaid provider agreement with the operator of an ICF/MR if the provider agreement or amendment would authorize the operator to receive Medicaid payments for more ICF/MR beds than the operator receives on the day before that day.

Before applying for the Medicaid waiver and amending the state Medicaid plan, the Director must consult with and receive input from an advisory council that the act creates called the ICF/MR Conversion Advisory Council.¹⁸⁰ The waiver request must be submitted and the state plan amendment is to be filed by July 1, 2006, or as soon thereafter as practical, but not later than January 1, 2007. However, the Director is not required to request the waiver and file the plan amendment at the same time. The Director is required to notify the Governor,

¹⁷⁸ *Previously, the Director of Mental Retardation and Developmental Disabilities could request that the Director of ODJFS apply for one or more of the Medicaid waivers previously authorized.*

¹⁷⁹ *The act prohibits ODMR/DD from converting any of the ICFs/MR it operates to a provider of home and community-based services under the ICF/MR Conversion Pilot Program.*

¹⁸⁰ *See "ICF/MR Conversion Advisory Council" below.*

Speaker and Minority Leader of the House, and President and Minority Leader of the Senate when the Director applies for the waiver and files the amendment.

Administration of pilot program

Under the act, ODJFS is permitted, if the federal government approves the Medicaid waiver request for the ICF/MR Conversion Pilot Program, to contract with ODMR/DD to assign the day-to-day administration of the pilot program to ODMR/DD. ODJFS may also transfer funds to pay for the nonfederal share of the pilot program's costs to ODMR/DD. If ODMR/DD takes both of these actions, ODMR/DD is to be responsible for paying the nonfederal share of the pilot program's costs.

Implementation of pilot program

The act provides that if the federal government approves the Medicaid waiver request for the ICF/MR Conversion Pilot Program, ODJFS or ODMR/DD, whichever administers the pilot program, is to implement the pilot program for not less than three years. In implementing the pilot program, ODJFS or ODMR/DD must do all of the following:

(1) Permit no more than 200 individuals to participate in the program at one time;

(2) Select, from among volunteers only, enough ICFs/MR to convert from providing ICF/MR services to providing home and community-based services as necessary to accommodate each individual participating in the program and ensure that the ICFs/MR selected for conversion cease to provide any ICF/MR services once the conversion takes place;¹⁸¹

(3) Permit individuals who reside in an ICF/MR that converts from providing ICF/MR services to providing home and community-based services to choose whether to participate in the pilot program or to transfer to another ICF/MR that is not converting;

(4) Ensure that no individual receiving ICF/MR services on the effective date of this provision of the act suffers an interruption in Medicaid-covered services that the individual is eligible to receive;

¹⁸¹ See "**Reconversion of ICFs/MR**" below.

(5) Collect information as necessary for the evaluation of the pilot program;¹⁸²

(6) After consulting with the ICF/MR Conversion Advisory Council, make adjustments to the pilot program that ODJFS or ODMR/DD, whichever administers the pilot program, determines are both necessary for the pilot program to be implemented more effectively and consistent with the terms of the federal waiver authorizing the pilot program.¹⁸³

Individuals participating in pilot program

Each individual participating in the ICF/MR Conversion Pilot Program is to receive home and community-based services pursuant to a written individual service plan that is to be created for the individual. The individual service plan must provide for the individual to receive home and community-based services as necessary to meet the individual's health and welfare needs. The pilot program's participants have the right to choose the qualified and willing providers from which to receive the pilot program's services. ODJFS or ODMR/DD, whichever administers the pilot program, must inform each participant of the participant's right to a state hearing regarding a decision or order ODJFS or ODMR/DD makes concerning the participant's participation in the pilot program.

Evaluation

ODJFS or ODMR/DD, whichever administers the ICF/MR Conversion Pilot Program, is required to conduct an evaluation of the pilot program. The evaluation is to be conducted in consultation with the ICF/MR Conversion Advisory Council. All of the following must be examined as part of the evaluation:

(1) The effectiveness of the home and community-based services provided under the pilot program in meeting the participants' health and welfare needs as identified in their written individual service plans;

(2) The participant's satisfaction with the services;

(3) The impact that the conversion from providing ICF/MR services to providing home and community-based services has on the ICFs/MR that convert;

¹⁸² See "**Evaluation**" below.

¹⁸³ *If ODMR/DD administers the ICF/MR Conversion Pilot Program, any adjustments are subject to ODJFS's agreement. No adjustment may be made that expands the pilot program's size or scope.*

(4) The pilot program's cost effectiveness, including administrative cost effectiveness;

(5) Feedback about the pilot program from the participants, participants' families and guardians, county boards of mental retardation and developmental disabilities, and providers;

(6) Other matters ODJFS or ODMR/DD considers appropriate for evaluation.

Two reports of the evaluation are to be prepared. The initial report must be finished not sooner than the last day of the pilot program's first year of operation. The final report must be finished not sooner than the last day of the pilot program's second year. ODJFS or ODMR/DD, whichever administers the pilot program, is to prepare the reports in consultation with the ICF/MR Conversion Advisory Council. A copy of the reports is to be provided to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House.

Restriction on statewide implementation

The act prohibits the ICF/MR Conversion Pilot Program from being implemented statewide unless the General Assembly enacts law authorizing the statewide implementation.

Reconversion of ICFs/MR

An ICF/MR that converts from providing ICF/MR services to providing home and community-based services under the ICF/MR Conversion Pilot Program is permitted to reconvert to providing ICF/MR services after the pilot program terminates. However, the reconversion is not permitted if the pilot program, following the General Assembly's enactment of law authorizing the pilot program's statewide implementation, is implemented statewide or the ICF/MR no longer meets the requirements for certification as an ICF/MR.

ODMR/DD responsibility for certain ICF/MR costs

The act provides that ODMR/DD is to become responsible for a portion of the nonfederal share of Medicaid expenditures for ICF/MR services provided by an ICF/MR that reconverts to providing ICF/MR services. ODMR/DD's responsibility is to begin not later than two and one-half years after the date the ICF/MR Conversion Pilot Program terminates. The portion of the Medicaid expenditures for which ODMR/DD is to become responsible is the portion that ODMR/DD and ODJFS specify in an agreement. However, ODMR/DD is not to be responsible for any portion of the nonfederal share of Medicaid expenditures

for ICF/MR services incurred for any beds of an ICF/MR that are in excess of the number of beds the ICF/MR had while participating in the pilot program.

Rules

The Director of ODJFS is required by the act to adopt rules as necessary to implement the ICF/MR Conversion Pilot Program. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) and in consultation with the ICF/MR Conversion Advisory Council. The rules are to include rules that establish (1) the type, amount, duration, and scope of home and community-based services provided under the pilot program and (2) the amount the pilot program pays for the services or the method by which the amount is determined.

ICF/MR Conversion Advisory Council

The act creates the ICF/MR Conversion Advisory Council consisting of all of the following members:

- (1) Two members of the House of Representatives appointed by the Speaker, each from a different political party;
- (2) Two members of the Senate appointed by the President, each from a different political party;
- (3) The Director of ODJFS or the Director's designee;
- (4) The Director of ODMR/DD or the Director's designee;
- (5) One representative of each of the following, appointed by the organization: Advocacy and Protective Services, Inc.; Arc of Ohio; Ohio League for the Mentally Retarded; People First Ohio; Ohio Association of County Boards of Mental Retardation and Developmental Disabilities; Ohio Provider Resource Association; Ohio Health Care Association; Ohio Legal Rights Service; Ohio Developmental Disabilities Council; and Cerebral Palsy Association of Ohio.

At least four members, other than the legislative members, must be either a family member of an individual who, at the time of the family member's appointment, is a resident of an ICF/MR or an individual with MR/DD. The Speaker of the House and Senate President are required to appoint jointly one of the legislative members to serve as chair. Members are to serve without compensation.

The advisory council is to cease to exist on the issuance of the final report of the evaluation of the ICF/MR Conversion Pilot Program.¹⁸⁴

Assisted living Medicaid waiver

(R.C. 5111.89 to 5111.893)

The act authorizes ODJFS to submit a request to the U.S. Secretary of Health and Human Services for a waiver of federal Medicaid requirements in order to create and implement a program under which assisted living services are provided to not more than 1,800 eligible Medicaid recipients. The act defines "assisted living services" as home and community-based services providing personal care, homemaking, chores, attendant care, medication oversight, and therapeutic social and recreational programming. If the U.S. Secretary approves the waiver request, ODJFS is required to contract with the Department of Aging for the Department of Aging to administer the Assisted Living Medicaid program. The contract is subject to the Director of Budget and Management's approval. The contract must include an estimate of the program's costs.

Eligibility

(R.C. 5111.891)

To be eligible for the Assisted Living Medicaid program, an individual must meet all of the following requirements:

(1) Require an intermediate level of care;¹⁸⁵

(2) At the time of application for the Assisted Living Medicaid program, be either a resident in a nursing home seeking to move to a residential care facility who would remain in a nursing home if not for the Assisted Living Medicaid

¹⁸⁴ See "**Evaluation**" above.

¹⁸⁵ An Ohio administrative rule provides that an individual requires an intermediate level of care if (1) the individual's physical and mental condition and resulting service needs have been evaluated and it is determined that the individual requires more than a level of minimum care, the individual's needs do not meet the level of skilled care, and the individual does not qualify for treatment in an intermediate care facility, and (2) the individual requires hands-on assistance with at least one activity of daily living and is unable to perform self-administration of medication and requires medication administration to be performed by another person (Ohio Administrative Code §5101:3-3-06).

program or a participant in certain Medicaid waiver components¹⁸⁶ who would move to a nursing facility if not for the Assisted Living Medicaid program;

(3) At the time of receiving services under the Assisted Living program, reside in a residential care facility, including a residential care facility owned or operated by a metropolitan housing authority that has a contract with the U.S. Department of Housing and Urban Development to receive an operating subsidy or rental assistance for the residents and a county or district home;

(4) Meet all other eligibility requirements established under rules adopted by the ODJFS related to the Assisted Living program.

Facility staffing requirements

(R.C. 5111.892)

The act requires a residential care facility providing services under the Assisted Living Medicaid waiver to have on site staff, 24 hours a day, individuals who are qualified to do all of the following:

(1) Meet the scheduled and unpredicted needs of individuals in the Assisted Living program in a manner that promotes the individuals' dignity and independence;

(2) Provide supervision services for those individuals;

(3) Help keep the individuals safe and secure.

Evaluation of Assisted Living program

(R.C. 5111.893)

The act provides that if the Assisted Living Medicaid waiver is approved by the Secretary, the Director of Aging must contract with a person or government entity to evaluate the program's cost effectiveness. The Director must provide results of the evaluation to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives not later than June 30, 2007.

¹⁸⁶ *The act provides that if the individual seeking admission to the Assisted Living Medicaid waiver component is not in a nursing facility seeking transfer to a residential care facility, the individual must be a participant in the PASSPORT program, the Choices program, or a Medicaid waiver component administered by ODJFS. The Department of Aging administers the PASSPORT and Choices programs.*

Appropriations related to the Assisted Living Medicaid waiver

(Section 206.66.36)

The act provides that once ODJFS enters into a contract with the Department of Aging to administer the Assisted Living program, ODJFS must submit quarterly reports to the Director of Budget and Management outlining the estimated costs of the program for the upcoming quarter, including the state and federal share of the costs.

Medicaid voucher pilot program

(R.C. 5111.971; Section 206.66.38)

The act requires ODJFS to request a federal Medicaid waiver authorizing ODJFS to create a pilot program under which not more than 200 individuals receive a spending authorization to pay for the cost of medically necessary health care services the pilot program covers. The spending authorization is to be in an amount not exceeding 70% of the average cost under the Medicaid program for providing nursing facility services to an individual. An individual participating in the pilot program is also to receive necessary support services, including fiscal intermediary and other case management services, that the pilot program covers.

To be eligible for the pilot program, an individual must (1) need an intermediate level of care as determined by ODJFS rules,¹⁸⁷ (2) at the time the individual applies for the pilot program, be a nursing facility resident who is seeking to move to a residential care facility or county or district home and who would remain in a nursing facility if not for the pilot program or a participant of certain home and community-based services Medicaid waiver programs who would move to a nursing facility if not for the pilot program,¹⁸⁸ and (3) meet all other eligibility requirements established in rules.

If the federal government grants the Medicaid waiver for the pilot program, ODJFS is required to enter into a contract with the Department of Aging that provides for the Department of Aging to administer the pilot program. ODJFS and the Department of Aging are authorized to adopt rules as necessary for the pilot program's implementation. The rules may establish a list of Medicaid-covered

¹⁸⁷ See "Assisted living Medicaid waiver" above for a discussion of the ODJFS rules concerning the need for an intermediate level of care.

¹⁸⁸ The home and community-based services Medicaid waiver programs are PASSPORT and CHOICES, both administered by the Department of Aging, and such waiver programs administered by ODJFS.

services not covered by the pilot program that a participant may not receive if the participant also receives Medicaid-covered services outside of the pilot program.

The Department of Aging is required by the act to certify to the Director of Budget and Management the pilot program's estimated costs. The certification must be done quarterly.

Ohio Access Success Project

(R.C. 5111.88 (5111.97))

The Director of Job and Family Services is permitted to establish, to the extent funds are available, the Ohio Access Success Project to help Medicaid recipients transition from residing in a nursing facility to residing in a community setting. There are a number of eligibility requirements for the Ohio Access Success Project. Among other requirements, a Medicaid recipient must receive Medicaid-funded nursing facility services at the time of application and need the level of care provided by nursing facilities. The act eliminates an eligibility requirement that required a Medicaid recipient to have resided continuously in a nursing facility for not less than 18 months before applying to participate in the Ohio Access Success Project.

ODJFS is permitted to limit the number of persons who may participate in the Ohio Access Success Project. The act requires, however, that ODJFS permit any recipient of Medicaid-funded nursing facility services to apply to participate in the project. The act also requires that ODJFS, if an application is received before the applicant has been a recipient of Medicaid-funded nursing facility services for six months, to ensure that an assessment is conducted as soon as practicable to determine whether the applicant is eligible to participate in the project. To the maximum extent possible, the assessment and eligibility determination must be completed not later than the date that occurs six months after the applicant becomes a recipient of Medicaid-funded nursing facility services.

Medicaid Administrative Study Council

(Sections 206.66.52 and 206.66.53)

The act creates the Medicaid Administrative Study Council. The Council is to study the administration of the Medicaid program. In conducting the study, the Council is to operate under the assumption that the General Assembly will enact

by July 1, 2007, a law establishing a new cabinet level department to administer the program.¹⁸⁹

The Council is to consist of all of the following members:

(1) One member of the Ohio Commission to Reform Medicaid, appointed by the Governor;

(2) One member of the staff of the Governor's office, appointed by the Governor;

(3) One individual with expertise in health-care finance, appointed by the Governor;

(4) One individual with expertise in health-care management, appointed by the Governor;

(5) One individual with expertise in health-care information technology, appointed by the Governor;

(6) One individual with expertise in health insurance, appointed by the Governor;

(7) One individual with expertise in health care quality assurance, appointed by the Governor;

(8) Two individuals with expertise in organizational change representing the business community, one appointed by the President of the Senate and one appointed by the Speaker of the House;

(9) The Director of Budget and Management or the Director's designee;

(10) The State Chief Information Officer or the Officer's designee;

(11) The Administrator of Workers' Compensation or the Administrator's designee;

(12) The Directors of ODJFS, Aging, Alcohol and Drug Addiction Services, Health, Mental Health, and Mental Retardation and Developmental Disabilities or the Directors' designees.¹⁹⁰

¹⁸⁹ *The act states that it is the General Assembly's intent that a new cabinet level department to administer the Medicaid program is to be established by July 1, 2007.*

The Governor is required to appoint a member of the Council to serve as chairperson of the Council. The Council is permitted to hire staff, enter into contracts, and take other actions the Council deems necessary to fulfill its duties.

The Council must examine and consider all of the following as part of its study:

(1) Structuring the Medicaid program's administration in a manner that optimizes its fiscal and operational objectives;

(2) Centralizing financing and information technology functions to coordinate the new department's activities with other state agencies, if any, that assist in its administration;

(3) Creating a unified budget for Medicaid-funded long-term care services;

(4) The fiscal and operational impact that a new administrative structure for the program would have on ODJFS and other state agencies that currently assist in the program's administration;

(5) The role of government entities that administer the program on the local level and the fiscal and operating impact that a new administrative structure for the program would have on those entities;

(6) The recommendations of the Ohio Commission to Reform Medicaid.

The Council is required to prepare quarterly reports on its progress. The first report is due 90 days after the effective date of this provision of the act. A final report is due not later than December 31, 2006.¹⁹¹ The final report must include recommendations regarding the scope and structure of the new department and a business plan that directs the transition of the Medicaid program's administration from ODJFS and other state agencies to the new department and addresses the transition's fiscal and operational impact. The final report must also identify the resources needed to implement the business plan.

¹⁹⁰ *The Directors of ODJFS, Aging, Alcohol and Drug Addiction Services, Health, Mental Health, and Mental Retardation and Developmental Disabilities are non-voting members.*

¹⁹¹ *The Council must submit the quarterly and final reports to the Governor, Senate President, and Speaker of the House.*

Performance audit of Medicaid program

(R.C. 117.10; Section 206.66.49)

Continuing Ohio law requires the Auditor of State to audit all public offices¹⁹² or accounts of private institutions, associations, boards, and corporations that receive public money for their use. The Auditor may audit the accounts of any Medicaid provider, if requested by ODJFS.

The act expands the authority of the Auditor to audit providers of Medicaid services by eliminating the prerequisite of a request by ODJFS for an audit.

The act authorizes the Auditor to conduct a single performance audit of the Medicaid program, during fiscal years 2006 and 2007, to be paid for by ODJFS. The audit may be conducted to determine ways of reducing or eliminating fraud, waste, and abuse in the program; making the program more efficient; and enhancing the program's results.

Reviews of the Medicaid program

(R.C. 5111.10 and 5111.85)

Prior law specifically permitted ODJFS to conduct reviews of Medicaid waivers. The reviews could include physical inspections of records and sites where services were provided and interviews of providers and recipients of the services. If ODJFS determined pursuant to a review that an individual or private or government entity had violated a rule governing a Medicaid waiver, ODJFS could establish a corrective action plan for the violator and impose fiscal, administrative, or both types of sanctions on the violator.

The act broadens ODJFS's review authority to the entire Medicaid program. If a review exposes a violation of a rule governing Medicaid and the entity responsible for the entity is a board of county commissioners, county department of job and family services, public children services agency, or child support enforcement agency, any disciplinary action ODJFS takes must be done in accordance with continuing law governing disciplinary actions against such entities.¹⁹³

¹⁹² "Public office" means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government (R.C. 117.01).

¹⁹³ The types of disciplinary action that ODJFS may take against a board of county commissioners, county department of job and family services, public children services

Medicaid data system

(R.C. 5111.915)

The act requires that ODJFS enter into an agreement with the Ohio Department of Administrative Services (DAS) for DAS to contract with a vendor to perform an assessment of the Medicaid Data Warehouse System's data collection and warehouse functions, including the ability to link the data sets of all of the agencies serving Medicaid recipients. DAS must contract through competitive selection within 30 days of the effective date of this provision of the act. The contract must require the vendor to complete the assessment within 60 days of the date by when the contract must be entered into.

The assessment of the data system must include functions related to fraud and abuse detection, program management and budgeting, and performance measurement capabilities of all agencies serving Medicaid recipients. This is to include ODJFS and the Departments of Aging, Alcohol and Drug Addiction Services, Health, Mental Health, and Mental Retardation and Developmental Disabilities.

The act requires that DAS, based on the assessment of the data system, to seek a qualified vendor to develop or enhance a data collection and data warehouse system for ODJFS and all agencies serving Medicaid recipients. This contract too must be done by competitive selection. The vendor that conducts the assessment of the data system must assist DAS in preparation for the request for proposal for the enhancement or development of the data system.

ODJFS is required by the act to seek enhanced federal funding for 90% of the funds required to establish or enhance the data system. DAS is prohibited from awarding a contract for establishing or enhancing the data system until ODJFS receives approval for the 90% federal match.¹⁹⁴

agency, or child support enforcement agency include requiring the entity to comply with a corrective action plan or to share with ODJFS a final disallowance of federal financial participation or sanction.

¹⁹⁴ *ODJFS is to seek the approval from the United States Department of Health and Human Services.*

Rules governing services

(R.C. 317.08, 317.36, 340.03, 340.16, 5107.26, 5111.02 (5111.021), 5111.02 (new), 5111.021 (5111.022), 5111.022 (5111.023), 5111.023 (5111.0114), 5111.025, and 5119.61)

Revised Code section 5111.02 authorizes ODJFS to adopt rules establishing the amount, duration, and scope of medical services to be included in the Medicaid program. The rules must establish the conditions under which services are covered and reimbursed, the method of reimbursement applicable to each covered service, and the amount of reimbursement or, in lieu of such amounts, methods by which such amounts are to be determined for each covered service.

The act requires that the rules adopted under R.C. 5111.02 include procedures for their enforcement that provide due process protections. The procedures are to include procedures for corrective action plans for, and imposing financial and administrative sanctions on, individuals and private and government entities that violate the rules.

Termination of unused Medicaid provider agreements

(R.C. 5111.06(D))

With certain exceptions, ODJFS must issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to terminate or not renew an existing provider agreement with a Medicaid provider. Circumstances not requiring an adjudication include when the provider has lost a required state license or has been terminated from participating in the Medicare Program. The act specifies another circumstance under which ODJFS is not required to conduct an adjudication when a provider agreement is being terminated or not renewed. ODJFS is not required to conduct an adjudication when both of the following have occurred:

- (1) The Medicaid provider has not billed or otherwise submitted a Medicaid claim to ODJFS for two years or longer;
- (2) ODJFS has determined that the provider has moved from the address on record with ODJFS without leaving an active forwarding address with ODJFS.

The act authorizes ODJFS to terminate or not renew the provider agreement by sending a notice explaining the proposed action to the address on record with ODJFS. The notice may be sent by regular mail.

Recovery of Medicaid overpayments

(R.C. 5111.06 and 5111.061)

The act authorizes ODJFS to recover a Medicaid payment or portion of a payment made to a provider to which the provider is not entitled. The recovery may occur at any time during the five-year period immediately following the end of the state fiscal year in which the overpayment is made. Among the overpayments that may be recovered under the act are the following:

- (1) Payment for a service, or a day of service, not rendered;
- (2) Payment for a day of service at a full per diem rate that should have been paid at a percentage of the full per diem rate;
- (3) Payment of a service, or day of service, that was paid by, or partially paid by, a third party and the payment or partial payment was not offset against the amount Medicaid paid to reduce or eliminate the Medicaid payment;
- (4) Payment when a Medicaid recipient's responsibility for payment was understated and resulted in an overpayment to the provider.

The act specifies that ODJFS, subject to the five-year limitation discussed above, is authorized to recover overpayments prior to or after any of the following:

- Adjudication of a final fiscal audit in accordance with the Administrative Procedure Act, or expiration of the time to issue the final fiscal audit;
- Adjudication of a finding under any other provision of the Medicaid statutes or the rules adopted under those statutes, or expiration of the time to issue a finding under those statutes or rules.

The act specifies that the recovery of an overpayment does not preclude ODJFS from subsequently issuing a final fiscal audit in accordance with the Administrative Procedure Act or issuing a finding under any other provision of the Medicaid statutes or rules. The act requires, however, that a subsequent final fiscal audit or finding be reduced by the amount of the prior recovery, as appropriate.

The act also specifies that nothing in its Medicaid overpayment recovery provisions limits ODJFS's authority to recover overpayments under any other provision of Ohio's statutes.

Recovery of Medicaid overpayments by other state agencies

(R.C. 5111.06 and 5111.914)

Continuing law authorizes ODJFS to contract with another state agency to have the agency administer a component of the Medicaid program. The contract must be in the form of an interagency agreement.

Under the act, if a state agency under an interagency agreement with ODJFS identifies that a Medicaid overpayment has been made to a provider, the state agency may commence actions to recover the overpayment on behalf of ODJFS. In recovering an overpayment, the state agency is required to comply with the following procedures:

--Seeking voluntary repayment. The state agency must attempt to recover the overpayment by notifying the provider of the overpayment and requesting voluntary repayment. Not later than five business days after notifying the provider, the state agency must notify ODJFS in writing of the overpayment. The state agency may negotiate a settlement of the overpayment and notify ODJFS of the settlement. A settlement negotiated by the state agency is not valid and cannot be implemented until ODJFS has given its written approval of the settlement.

--Holding administrative hearings. If the state agency is unable to obtain voluntary repayment, the agency must give the provider notice of an opportunity for a hearing in accordance with the Administrative Procedure Act. If the provider timely requests a hearing, the state agency must conduct the hearing to determine the legal and factual validity of the overpayment. On completion of the hearing, the state agency must submit its hearing officer's report and recommendation and the complete record of proceedings, including all transcripts, to the Director of ODJFS for final adjudication. The Director may issue a final adjudication order in accordance with the Administrative Procedure Act.

Attorney fees

Under the hearing process, the state agency must pay any attorney fees imposed under the Administrative Procedure Act. ODJFS is required to pay any attorney fees imposed under continuing law when authorized parties prevail in an appeal of an agency's adjudication order.

Effect on other ODJFS actions

The act specifies that its provisions on recovery of Medicaid overpayments by other state agencies do not preclude ODJFS from adjudicating a final fiscal

audit under provisions of continuing law, from recovering overpayments under the act, or from taking any other actions authorized under Ohio's Medicaid statutes.

Final Medicaid orders when no hearing is requested

(R.C. 5111.062 and 5111.914(D))

The act provides that ODJFS is not required to hold a hearing in accordance with the Administrative Procedure Act when ODJFS gives notice of the opportunity for a hearing but the provider or other entity subject to the notice does not request a hearing or timely request a hearing in accordance with the Act. The Director of ODJFS is authorized to proceed by issuing a final adjudication order in accordance with the Administrative Procedure Act.

The act specifies that these provisions apply to any action taken by ODJFS under existing law, the act's Medicaid overpayment recovery provisions, or any other provision of the Medicaid statutes requiring ODJFS to give notice of an opportunity for a hearing. The act also applies substantially equivalent provisions to state agencies that administer components of the Medicaid program for ODJFS and attempt to recover Medicaid overpayments through a hearing process.

Pharmacy and Therapeutics Committee

(R.C. 5111.085)

The act increases the membership of the ODJFS Pharmacy and Therapeutics Committee from eight members to nine by including an additional pharmacist. This increases the number of pharmacists on the committee to three.

ODJFS' duties under the Medicare Prescription Drug, Modernization and Improvement Act of 2003

(R.C. 329.04 and 5111.98)

The act authorizes ODJFS to take, as necessary to fulfill ODJFS' duties under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, any of the following actions:

- (1) Adopting rules;
- (2) Assigning duties to county departments of job and family services;
- (3) Making payments to the United States Department of Health and Human Services from appropriations made to ODJFS for that purpose.

Rules must be adopted as follows:

- If the rules pertain to ODJFS' duties regarding service providers, they must be adopted in accordance with the Administrative Procedures Act (R.C. Chapter 119.).
- If the rules pertain to ODJFS' duties regarding individuals' eligibility for services, they must be adopted in accordance with R.C. 111.15.¹⁹⁵
- If the rules pertain to ODJFS' duties regarding financial and operational matters between ODJFS and county departments, they must be adopted in accordance with R.C. 111.15 as if they were internal management rules.

VIII. Hospital Care Assurance Program

(Sections 403.17 and 403.18)

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 was scheduled to terminate on October 16, 2005. The act delays the termination until October 16, 2007.

¹⁹⁵ *Adoption of rules under R.C. Chapter 119. requires a public hearing; adoption of rules under R.C. 111.15 does not.*

IX. Disability Medical Assistance

Disability Medical Assistance Program

(R.C. 9.24, 127.16, 131.23, 323.01, 329.04, 329.051, 2305.234, 2744.05, 3111.04, 3119.54, 3317.029, 3317.10, 3702.74, 4123.27, 4731.65, 4731.71, 5101.181, 5101.26, 5101.31, 5101.36, 5110.01, 5110.05, 5112.03, 5112.08, 5112.17, 5115.20, 5115.22, and 5115.23; Section 206.66.42; R.C. 5115.10, 5115.11, 5115.12, 5115.13, and 5115.14 (repeal))

ODJFS operates the Disability Medical Assistance Program. To be eligible for the Program, a person must be "medication dependent"¹⁹⁶ and ineligible for any category of Medicaid, along with other requirements. A person eligible for the Program may receive "covered services."¹⁹⁷

The Governor vetoed provisions that would have terminated the Disability Medical Assistance Program effective October 1, 2005. As a result, the act retains the Disability Medical Assistance Program. However, ODJFS has authority under continuing law to modify the Program.

Disability Medical Assistance Council

The act establishes the Disability Medical Assistance Council composed of the following individuals:

- (1) The Director of Job and Family Services or the Director's designee;
- (2) The Director of the Rehabilitative Services Commission or the Director's designee;
- (3) The Director of Rehabilitation and Correction or the Director's designee;
- (4) The Director of Mental Health or the Director's designee;

¹⁹⁶ *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.*

¹⁹⁷ *"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).*

(5) The Director of Alcohol and Drug Addiction Services or the Director's designee;

(6) Two individuals appointed by the Director of Job and Family Services to represent health care and behavioral health care trade associations, one of whom is to represent county behavioral health boards;

(7) Three members of the Medicaid Care Advisory Committee in the Department of Job and Family Services;

(8) Three individuals appointed by the Director of Job and Family Services to represent low-income disabled individuals;

(9) An individual appointed by the Director of Job and Family Services to represent county boards of job and family services;

(10) An individual appointed by the Director of Job and Family Services to represent hospitals;

(11) Two individuals appointed by the Director of Job and Family Services to represent the pharmaceutical industry.

Under the act, the Council is required to submit to the Governor, the Speaker of the House of Representatives, and the President of the Senate a written report to propose a program to replace the Disability Medical Assistance Program when that program terminates. The report is required to be submitted by September 1, 2005 and include the following recommendations:

(1) The type, scope, and duration of covered services;

(2) Delivery system options;

(3) Eligibility criteria;

(4) Measures that can be taken to assist individuals who received benefits under the Program but would not meet new eligibility criteria proposed by the Council to transition to other government or private medical assistance programs;

(5) A disability advocacy program to assist applicants for and recipients of assistance under the new program;

(6) Any other recommendations the Council considers necessary.

The Governor vetoed provisions that would have terminated the existing Disability Medical Assistance Program effective October 1, 2005 and required the program proposed by the Council to be implemented not later than that date.



X. Title XX Social Services

Title XX of the Social Security Act authorizes a block grant program under which states receive federal funds to be used for social services. In Ohio, the funds are divided among three state agencies: the Departments of Job and Family Services, Mental Health, and Mental Retardation and Developmental Disabilities.

Audits of state agency Title XX expenditures

(R.C. 5101.46(F))

The act eliminates a requirement that each of the three state agencies receiving Title XX funds commission an entity independent of itself to conduct an audit of its Title XX expenditures. The audits were required to occur at least biennially and copies were to be submitted to the General Assembly and the United States Secretary of Health and Human Services.

Audits of Title XX social services providers

(R.C. 5101.46(F))

Law modified by the act authorizes the three state agencies that receive Title XX funds, as well as their respective local agencies,¹⁹⁸ to require an entity under contract to provide Title XX social services to submit to an audit on the basis of alleged misuse or improper accounting of funds. If there are adverse findings in the audit, the state or local agency may terminate or refuse to enter into a Title XX contract with the provider.

The act expressly requires a social services provider to reimburse the state or local agency for the cost of an audit, while eliminating a provision specifying that the cost is to be reimbursed under a subsequent or amended Title XX contract. If an audit demonstrates that the provider is responsible for one or more adverse findings, the act requires the provider to reimburse the appropriate state or local agency the amount of the adverse findings. The act continues the agency's authority to terminate or refuse to enter into Title XX contracts with the provider.

¹⁹⁸ For ODJFS, a local agency is a county department of job and family services; for the Department of Mental Health, it is a board of alcohol, drug addiction, and mental health services; for the Department of Mental Retardation and Developmental Disabilities, it is a county board of mental retardation and developmental disabilities.

Rules governing the Title XX program

(R.C. 5101.46)

Law modified by the act permits ODJFS to adopt rules to carry out the purposes of the Title XX statutes. The act authorizes ODJFS to adopt rules to implement, not just carry out, the Title XX statutes, and eliminates a provision specifying that ODJFS may adopt rules "as necessary." Rules governing ODJFS's financial and operational matters or matters between ODJFS and county departments of job and family services, rather than "fiscal and administrative matters," must be adopted as internal management rules. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Use of TANF funds for Title XX social services

(R.C. 5101.461 (primary); 329.04, 5101.35, and 5101.821)

Title IV-A of the Social Security Act, the federal law authorizing the TANF Block Grant, allows states to use a percentage of the funds they receive for Title XX social services.¹⁹⁹

The act creates a separate statute governing the use of TANF funds for Title XX social services. Under the act, ODJFS is expressly permitted to use TANF funds for purposes of providing Title XX social services, to the extent authorized by federal law. The act specifies that the amount used cannot exceed the maximum amount permitted by federal law. It also specifies that the funds and the provision of social services with the funds are not subject to other statutes governing Title XX social services.

Audits of TANF/Title XX social service providers

The act authorizes ODJFS and any county department of job and family services to require an entity under contract to provide Title XX social services with TANF funds to submit to an audit on the basis of alleged misuse or improper accounting of funds. If an audit is required, the social services provider is required to reimburse ODJFS or the county department for the cost of the audit.

If an audit demonstrates that a social services provider is responsible for one or more adverse findings, the act requires the provider to reimburse ODJFS or the county department the amount of the adverse findings. The amount cannot be

¹⁹⁹ 42 United States Code 604.

reimbursed with the TANF funds received to provide social services. ODJFS and the county departments are authorized to terminate or refuse to enter into a contract with a social services provider if there are adverse findings that are the responsibility of the provider.

Rules governing TANF/Title XX social services

The act permits ODJFS to adopt rules to implement and carry out the purposes of the statute governing the use of TANF funds for Title XX social services. Rules governing ODJFS's financial and operational matters or matters between ODJFS and county departments are to be adopted as internal management rules under procedures that do not require public hearings. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires public hearings.

XI. Food Stamp Program

The Food Stamp Program is a federal program administered by ODJFS and county departments of job and family services. It is designed to raise the nutritional levels of low-income individuals and families.

Food Stamp Program work requirements

(Section 206.67.24)

Under federal law governing the Food Stamp Program, no physically and mentally fit individual age 18 to 50 is eligible for food stamp benefits if, during the preceding 36-month period, the individual received food stamp benefits for not less than three months during which the individual failed to (1) work at least 20 hours per week, averaged monthly, (2) participate in and comply with the requirements of a work program for 20 hours or more per week, or (3) participate in and comply with the requirements of a workfare program. The federal law provides certain exceptions to this work requirement.

One of the exceptions is that a state may request that the United States Secretary of Agriculture waive the applicability of the work requirement to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate of over 10% or does not have a sufficient number of jobs to provide employment for the individuals. The act requires ODJFS to request that the Secretary issue the waiver for fiscal years 2006 and 2007. ODJFS is required to make monthly determinations of which counties the waiver is to be in effect in. No individual

may be exempted from the work requirements for more than a total of 12 months during the fiscal biennium.

ODJFS is required by the act to report to the Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate on receipt or rejection of the waiver.

JUDICIARY/SUPREME COURT

- Provides a \$500 vehicle allowance per month for the chief justice and the justices of the Supreme Court.
- Requires the clerk of the Medina Municipal Court to be elected, not appointed, and be compensated in the same manner as other elected clerks of municipal courts having a territory population of 100,000 or more.
- Removes an indigent person's right to appointed counsel in certain civil proceedings in juvenile court.
- Authorizes a county containing 55 or more law enforcement agencies to participate in a criminal justice regional information system.
- Specifies that funding for participation in a criminal justice regional information system comes from an additional court cost not exceeding \$5 on all motor vehicle moving violation cases that occur in the county.

Vehicle allowance for Supreme Court justices

(R.C. 141.04)

Continuing law provides that the annual salaries of the chief justice of the Supreme Court and of the justices of the Supreme Court are payable from the state treasury and, for each calendar year from 2002 through 2008, the annual salaries of the chief justice and the justices must be increased by an amount equal to the adjustment percentage for that year multiplied by the compensation paid the preceding year. The adjustment percentage for a year is the lesser of the following: (1) 3% or (2) the percentage increase, if any, in the consumer price index over the 12-month period that ends on September 30 of the immediately preceding year, rounded to the nearest 1/10 of 1%.



The act provides that, in addition to the salaries payable pursuant to the provision described above, the chief justice and the justices are entitled to a vehicle allowance of \$500 per month, payable from the state treasury. This allowance must be increased on January 1 of each odd numbered year by an amount equal to the percentage increase, if any, in the consumer price index for the immediately preceding 24-month period for which information is available.

Medina municipal court clerk

(R.C. 1901.31; Section 509.03)

Election

Under continuing law, clerks of municipal courts may be either appointed or elected. For municipal courts with a population in the court territory of 100,000 or more, clerks of the courts generally are elected in the same manner as judges are elected to those courts. That is, they generally are elected on the nonpartisan ballot for terms of six years). (The manner in which those judges, and the associated clerks, are nominated depends upon whether municipal charter provisions apply to the court.

Under former law, regardless of the territory of the Medina Municipal Court, the clerk of that Court was required to be appointed by the judges of that Court. The clerk held office until the clerk's successor was similarly appointed and qualified. The act eliminates this specific appointment provision, so that the general rule applicable to municipal courts with a population in the court territory of 100,000 or more applies. Thus, under the act, the clerk of the Medina Municipal Court must be elected on the nonpartisan ballot for a term of six years.

The act requires the clerk of the Medina Municipal Court to be elected by the qualified electors of the territory of the court at the first general election that occurs not less than six months after the act's effective date for non-appropriation provisions. The term of the clerk elected in that general election must commence on January 1 of the following year and continue until the clerk's successor is elected and qualified according to the normal schedule for the election of the judge of that court. The act provides that the current clerk of the Medina Municipal Court will continue in office until the elected clerk takes office. If the office becomes vacant prior to that date, the judges of the Medina Municipal Court must appoint a clerk to serve until the elected clerk takes office.

Compensation

For certain municipal courts, including the Medina Municipal Court under former law, the clerk receives the annual compensation that the presiding judge of

the court prescribes, if the court's revenue for the preceding year equals or exceeds the expenditures for the operation of the court payable from the city treasury, or the annual compensation that the legislative authority prescribes, if the court's revenue for the preceding year is less than the expenditures for the operation of the court. Generally, in a municipal court with a population in the court territory of 100,000 or more, the clerk receives annual compensation equal to 85% of the salary of a judge of the court.

The act eliminates the specific compensation provision applicable to the clerk of the Medina Municipal Court. Thus, under the act, the general rule applicable to municipal courts with a population in the court territory of 100,000 or more applies. Under the act, then, the clerk of the Medina Municipal Court receives annual compensation equal to 85% of the salary of the judge of the court.

Removal of the right to counsel for indigents in certain civil juvenile proceedings

(R.C. 2151.352)

Continuing law gives any child, a child's parents or custodian, or any other person in loco parentis of a child the right to representation by legal counsel at all stages of proceedings in juvenile courts under R.C. Chapter 2151. or 2152. Under former law, if the person was indigent and unable to employ counsel, the person was entitled to have counsel appointed pursuant to R.C. Chapter 120. Counsel appointed pursuant to R.C. Chapter 120. include state public defenders, county public defenders, joint county public defenders, and counsel appointed through a county appointed counsel system.

For certain civil matters only, the act removes an indigent person's right to appointed counsel when the person is a party to a proceeding in juvenile court. Under the act, a child, a child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of a juvenile court proceeding. However, if the party is indigent, the party is not entitled to appointed counsel in a civil matter if the court is exercising jurisdiction pursuant to one of the following bases listed in R.C. 2151.23(A)(2), (3), (9), (10), (11), (12), or (13); (B)(2) through (6); (C); (D); or (F)(1) or (2):

(1) To determine the custody of any child not a ward of another Ohio court;

(2) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(3) To hear and determine requests for the extension of temporary custody agreements and requests for court approval of certain permanent custody agreements;

(4) To hear and determine applications for consent to marry;

(5) To hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic abuse, or an action for support under the Uniform Interstate Family Support Act;

(6) To hear an action under R.C. 121.38 concerning an agency dispute with a county Family and Children First Council's decision regarding a child's services;

(7) To hear and determine a violation of the compulsory attendance laws;

(8) To determine the paternity of a child born out of wedlock;

(9) Any action under the Uniform Interstate Family Support Act;

(10) To hear and determine an application for a child support order for any child if the child is not a ward of another Ohio court;

(11) To hear and determine an action under R.C. 3111.28 regarding the rescission of an acknowledgment of paternity;

(12) To hear and determine a motion for relief from a paternity determination or support order under R.C. 3119.961;

(13) Certain actions for divorce or legal separation that involve the custody or care of children;

(14) All matters as to custody and support of children after a divorce decree has been granted.

Criminal justice regional information system

(R.C. 305.28, 2949.092, and 2949.093)

The act allows a board of county commissioners of any county containing 55 or more law enforcement agencies, by resolution, to elect to participate in a criminal justice regional information system. The board may either create and maintain a new criminal justice regional information system or participate in an existing criminal justice regional information system. The act defines a "criminal justice regional information system" as a governmental computer system that

serves as a cooperative between political subdivisions in a particular region for the purpose of providing a consolidated computerized information system for criminal justice agencies in that region.

To fund participation in the criminal justice regional information system, a participating county must establish, by resolution an additional court cost that does not exceed \$5 to be imposed for moving violations that occur in that county.²⁰⁰ The board, then, must give written notice to all courts located in that county that adjudicate or otherwise process moving violations that occur in that county of the county's election to participate in the system and of the amount of the additional court cost.

Upon receipt of the notice, each court must impose the amount as an additional court cost for all moving violations, including moving violations committed by a juvenile traffic offender, the court adjudicates or otherwise processes. The court cannot waive payment of this additional court cost unless the court determines that the offender or juvenile is indigent and waives the payment of all court costs imposed upon the indigent offender or juvenile. All moneys collected from this cost must be transmitted on the first business day of the following month by the clerk of the court to the county treasury of the county in which the court is located for deposit in the county's criminal justice regional information fund, discussed below.

Also, whenever a person is charged with any offense that is a moving violation and posts bail, the court must add to the amount of the bail the court cost imposed because of the county's participation in a criminal justice regional information system. The clerk of the court retains the cost until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk must transmit the cost to the county treasurer, for deposit in the county criminal justice regional information fund, discussed below. Otherwise, the clerk must return the costs to the person.

If a board elects to participate in a criminal justice information system, the board must create in its county treasury a criminal justice regional information fund to receive the additional court costs. Generally, the funds can only be used

²⁰⁰ *The act defines a "moving violation" as meaning any violation of any statute or ordinance, other than R.C. 4513.263 or an ordinance that is substantially similar to that section, that regulates the operation of vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles.*

by the county to pay the costs it incurs in creating and maintaining a new criminal justice regional information system or to pay the costs of participation in an existing criminal justice regional information system. However, if the board of county commissioners determines that the funds in the criminal justice regional information system fund are more than sufficient to participate in a criminal justice regional information system, the board may declare a surplus in the fund. The county may then expend the surplus to pay the costs it incurs in improving the law enforcement computer technology of local law enforcement agencies located in that county.

The act also provides that no person can be placed or held in a detention facility for failing to pay this additional court cost or bail.

LEGISLATIVE SERVICE COMMISSION

- Requires the Legislative Service Commission to create and maintain an Internet-accessible electronic database of each Ohio school district's current and historical revenue and expenditures.
- Eliminates the Legislative Office of Education Oversight.
- States that it is the intent of the General Assembly to reconstitute the Legislative Budget Office within the Legislative Service Commission.

Ohio school district revenue and expenditure database

(R.C. 103.132)

The act requires the Legislative Service Commission, in conjunction with the Legislative Information Systems Office, to establish and maintain an electronic database containing current and historical revenue and expenditure data for each Ohio school district. The database must be easy to use and readily accessible through the Internet.

Legislative Office of Education Oversight

(Section 206.87)

The Legislative Office of Education Oversight (LOEO) is a nonpartisan legislative agency that evaluates state-funded education programs and makes recommendations to the General Assembly based on its findings. The act



eliminates the LOEO and requires all ongoing studies to be completed by December 31, 2005.

Legislative Budget Office

(Section 206.87)

In 2000, the staff and functions of the Legislative Budget Office (LBO) were merged into the Legislative Service Commission. The act states that it is the intent of the General Assembly to reconstitute the LBO within the Commission to focus on revenue forecasting. The act requires the Commission to hire a Legislative Budget Officer and also to employ a person to focus on Medicaid, TANF, and other federally funded, caseload-driven programs. The General Assembly intends to retain current fiscal staff within the Commission.

LOCAL GOVERNMENT

- Permits agencies and instrumentalities of political subdivisions to establish and maintain individual and joint self-insurance programs to provide health care benefits to officers and employees of the agency or instrumentality.
- Provides new procedures for the service coordination mechanisms, comprehensive family service coordination plans, and dispute resolution processes of county family and children first councils, and modifies council membership provisions.
- Permits a county, juvenile, or municipal court judge to use money in that court's indigent drivers alcohol treatment fund to pay the cost of the continued use of electronic continuous alcohol monitoring devices.
- Raises the bid amount under the Competitive Bidding on County Purchases Law for which a bond or other specified form of bid guaranty is required from in excess of \$10,000 to in excess of \$25,000.
- Permits the boards of library trustees of school district public libraries, county free public libraries, township free public libraries, municipal free public libraries, county library districts, and regional library districts to assess fees for services other than the circulation of printed materials.



- Transfers the power to fix the compensation of the librarian and up to two assistant librarians of a law library association's law library from the judges of the court of common pleas to the association's board of trustees.
- Pursuant to a graduated schedule for calendar year 2007 through calendar year 2010, generally apportions the responsibility for payment of the compensation of the librarian and up to two assistant librarians of an association's law library, as well as the payment of the costs of the space, utilities, furniture, and fixtures of the association's law library, between the board of county commissioners and the association's board of trustees.
- Beginning in calendar year 2011, requires the association's board of trustees to assume full financial responsibility for paying the librarian's and all assistant librarians' compensation as well as the costs of the space, utilities, furniture, and fixtures for the association's law library.
- Eliminates the county's responsibility to (1) pay the librarian's and up to two assistant librarians' compensation and the costs of the space, utilities, furniture, and fixtures for the association's law library if the association itself obtains space for its law library and (2) provide a law library association with space and utilities for its law library in the county courthouse or elsewhere in the county if the association itself obtains space for its law library.
- Creates the Task Force on Law Library Associations and requires it to study and make specified recommendations as to the structure, funding, and administration of law library associations' law libraries.
- Qualifies the authority of boards of elections to procure health care and/or life insurance coverage for their members, their full-time employees, and the immediate dependents of their members and their full-time employees (basically requiring a board of county commissioners' denial of coverage or approval of board of elections' procurement of coverage), and explicitly refers to these members and employees in the law authorizing a board of county commissioners to procure health care and/or life insurance coverage for "county officers and employees."
- Retains the authority of a board of elections to apply to the court of common pleas to fix the amount of the board's necessary appropriation

when it contends the board of county commissioners has failed to appropriate a sufficient amount to cover its necessary and proper expenses, but limits this mandamus action authority to a failure to provide for the necessary and proper expenses of the board *pertaining to the conduct of elections* and excludes from those expenses "expenses for employee compensation and benefits" incurred in the conduct of elections.

- Prohibits a board of elections from incurring any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefore to meet the obligation--the sufficiency being determined in accordance with the Tax Levy Law by the county auditor's certification.
- Requires a board of county commissioners, upon a request of the board of elections, to generally adopt a resolution transferring funds from one appropriation item of the board of elections to another, but excepts from the requirement transfers sought for the purpose of providing employee bonuses and certain salary increases.
- Abolishes the County Electronic Voting Machine Maintenance Fund.
- Requires a county that is scheduled to acquire voting machines using funds made available pursuant to the Help America Vote Act of 2002 that wishes to acquire direct recording electronic voting machines as the primary voting system in the county to acquire a minimum number of those machines, based upon a calculation by the Secretary of State.
- Permits a political subdivision to require payment of deductibles under its liability insurance or self-insurance program from accounts or funds in its treasury from which a loss was directly attributable, and provides a procedure to transfer the deductible and the costs of either program from the appropriate funds or accounts to the subdivision's general fund.
- Creates the ten-legislator Local Government and Library Revenue Distribution Task Force to study potential sources of state funding for the Local Government Fund, Library and Local Government Support Fund, and Local Government Revenue Assistance Fund that have the capacity to allow for growth in funding levels and to provide stability in funding levels, and then to report its recommendations and suggested implementing legislation to the Governor and General Assembly.

- Establishes a distinct method of appointment for the board of trustees of regional transit authorities created by two municipal corporations and one county with a population of at least 500,000.
- Mandates one resident member be appointed to a metropolitan housing authority by the chief executive officer of the most populous city in the district, when a resident member is required by federal law, and specifies that any metropolitan housing authority to which two additional members were appointed under former law (because the district had 300 or more assisted housing units and no member who resided in such a unit) must continue to have those additional members.
- Authorizes a board of county commissioners in a county with a population of 1.2 million or more to establish and provide "local funding options" for constructing and equipping a convention center, in addition to its authority under current law to assist in doing so.
- Authorizes a board of county commissioners in a county with a population of 1.2 million or more to establish and provide local funding options for the support of arts and cultural organizations operating in a regional arts and cultural district in which the county is included.
- Requires the board of county commissioners in a county with a population of 500,000 or more that creates a regional arts and cultural district under an alternative statutory procedure, to appoint a three-member board of trustees for the district, instead of serving itself as the district's governing board.
- Requires cities with populations over 100,000 and counties to report by October 1, 2005 to the Auditor of State their efforts to reduce costs by consolidating services and engaging in regional cooperation.
- Eliminates a specific requirement for a county engineer to file an annual inventory of machinery, tools, other equipment, and vehicles with the board of county commissioners.
- Eliminates a requirement for a township to file an annual report to the county engineer, on blanks prepared by the county engineer, concerning township highways, bridges, and culverts.

Health care benefits for agencies of political subdivisions

(R.C. 9.833; Section 611.03)

Continuing law grants political subdivisions, including municipal corporations, townships, counties, and other bodies corporate and politic smaller than the state, the authority to provide health care benefits to the subdivision's officers and employees through individual or joint self-insurance programs. The act extends this authority to agencies and instrumentalities of political subdivisions.²⁰¹ The act requires an agency or instrumentality that establishes and maintains a self-insurance health care program to reserve the funds necessary to cover the potential costs of the program in a special fund established by resolution duly adopted by the agency's or instrumentality's governing board. Funding costs may be allocated among funds on the basis of relative exposure and loss experience. These new provisions regarding health care benefits for agencies and instrumentalities will not take effect, however, until the General Assembly enacts law that confirms the provisions, orders their implementation, and makes other specifications necessary to their implementation.

Procedure changes to family and children first county councils

(R.C. 121.37, 121.38, 121.381, and 121.382)

Under continuing law, each board of county commissioners must establish a county family and children first council to facilitate the provision of services to children and families by various agencies, including school districts, boards of health, the county boards of alcohol, drug addiction, and mental health services, and mental retardation and developmental disabilities, and the county department of job and family services.

Purpose of county family and children first councils

The act elaborates on the purpose of the county family and children first council. The council's purpose is to streamline and coordinate existing government services for families seeking services for their children.

²⁰¹ *The act excludes school districts from being considered "political subdivisions" and terminates their prior law authority regarding the provision of health care benefits to officers and employees under R.C. 9.833. The act's effect on school district employee health care benefits is discussed under "**School Employees Health Care Board**" in the Department of Insurance section of the Final Analysis.*

Membership of county family and children first councils

Continuing law requires each county family and children first council to include at least three individuals whose families are receiving or have received services from an agency represented on the council or another county's council. The act adds a prohibition preventing individuals who are employed by an agency represented on a county council from serving as such family representatives on the council.

County council executive committee

Continuing law allows the administrative powers and duties of a family and children first county council to be delegated to an executive committee established from the membership of the county council. The act requires that an executive committee of a county council include at least one family county council representative who does not have a family member employed by an agency represented on the council.

Procedures for the county service coordination mechanism

Under continuing law as modified by the act, each county must develop a service coordination mechanism that includes a procedure for each of the following:

- (1) Assessment of the needs of any child, including a child who is abused, neglected, dependent, unruly, or delinquent and under the jurisdiction of the juvenile court, or a child whose parent or custodian is voluntarily seeking services;
- (2) Assessment of the service needs of the family of any child, including a child who is abused, neglected, dependent, unruly, or delinquent and under the jurisdiction of the juvenile court or a child whose parent or custodian is voluntarily seeking services;
- (3) Development of a comprehensive joint service plan that designates service responsibilities among the various state and local agencies that provide relevant services (renamed "comprehensive family service coordination plan" by the act--as discussed below);
- (4) Resolution of disputes among the agencies providing services.

The act combines and modifies the first two procedures by requiring that each county develop a service coordination mechanism that assesses the service needs and strengths of any child or family that has been referred to the council for service coordination, including a child whose parent or custodian is voluntarily

seeking services, and for ensuring that parents and custodians are afforded the opportunity to participate.

The act also requires county councils to develop the following additional procedures:

(1) A means by which an agency, including a juvenile court, or a family voluntarily seeking service coordination can refer the child and family to the county council for service coordination;

(2) A procedure ensuring that a family and all appropriate staff from involved agencies, including a representative from the appropriate school district, are notified of and invited to participate in all family service coordination plan meetings;

(3) A procedure that permits a family to initiate a meeting to develop or review the family's service coordination plan and allows the family to invite a family advocate, mentor, or support person of the family's choice to participate in any such meeting;

(4) A procedure for ensuring that a family service coordination plan meeting is conducted before a non-emergency out-of-home placement for all multi-need children, or within ten days of a placement for emergency placements of multi-need children. The family service coordination plan must outline how the county council members will jointly pay for services, where applicable, and provide services in the least restrictive environment. Nothing in this procedure may be interpreted to override or affect juvenile court decisions regarding an out-of-home placement, long-term placement, or emergency out-of-home placement.

(5) A procedure for monitoring the progress and tracking the outcomes of each service coordination plan requested in the county including monitoring and tracking children in out-of-home placements to assure continued progress, appropriateness of placement, and continuity of care after discharge from placement with appropriate arrangements for housing, treatment, and education;

(6) A procedure for protecting the confidentiality of all personal family information disclosed during service coordination meetings or contained in the comprehensive family service coordination plan;

(7) A local dispute resolution process to resolve disputes between a child's parents or custodians and the county council regarding service coordination.

The act provides that the county service coordination mechanism will serve as the guiding document for coordination of services in a county. The act also requires all family service coordination plans be developed in accordance with the



mechanism. For children who are receiving services under the Help Me Grow program administered by the Ohio Department of Health, the service coordination mechanism must be consistent with the Department's rules regarding the Help Me Grow program.

Changes to the county council comprehensive joint service plan

Under continuing law modified by the act, each county is required to develop a comprehensive joint service plan that designates service responsibilities among the state and local agencies that provide services to children and includes a service coordination process for dealing with a child who is alleged to be unruly. The act renames the comprehensive joint service plan the "comprehensive family service coordination plan" and requires the plan to do the following:

- (1) Designate an individual, approved by the family, to track the progress of the family service coordination plan, schedule reviews, and facilitate the family service coordination plan meeting process;
- (2) Ensure that the assistance and services provided are responsive to the strengths and needs of the family, as well as the family's culture, race, and ethnic group, by allowing the family to offer information and suggestions and participate in decisions. Identified assistance and services must be provided in the least restrictive environment possible.
- (3) Include timelines for completion of goals specified in the plan with regular reviews to monitor progress;
- (4) Include a plan for dealing with short-term crisis situations and safety concerns.

Changes to the service coordination process for children alleged to be unruly

Continuing law requires the comprehensive joint service plan (renamed the "comprehensive family service coordination plan") to include a service coordination process for dealing with a child who is alleged to be unruly. The service coordination process also includes:

- (1) An assessment of the needs and strengths of the child and the child's family and the services they need;
- (2) Designation of the person or agency to conduct the assessment of the child and the child's family and designation of the instruments to be used to conduct the assessment;

(3) Designation of the agency to provide case management services to the child and the child's family;

(4) An emphasis on the personal responsibilities of the child and the parental responsibilities of the parents, guardian, or custodian of the child;

(5) Involvement of local law enforcement agencies and officials.

The act modifies two of these elements. First, the assessment of needs and strengths of the child and the child's family is conducted under the procedures of the county service coordination mechanism. Second, the service coordination process does not need to designate an agency to provide case management services to the child and the child's family.

One requirement of the service coordination process is to include methods to divert the child from the juvenile court system, which can include a number of actions, such as a method for dealing with short-term crisis situations involving a confrontation between the child and the parents, guardian, or custodian.

Under the act, the method for dealing with short-term crisis situations is no longer part of the service coordination process. Instead, it is part of the comprehensive family service coordination plan (see "**Changes to the county council comprehensive family service coordination plan**" above).

Dispute resolution processes

Continuing law requires the county council to include in its mechanism a dispute resolution procedure to resolve conflict among agencies. In addition to using dispute resolution for agency disputes, the act requires a county council to use its dispute resolution process to resolve disputes between the council and the parents or custodians of a child regarding service coordination. The county council is required to inform the parents or custodians of their right to use the dispute resolution process. Parents or custodians are required to use existing local agency grievance procedures for disputes not related to service coordination. The dispute resolution process is in addition to and does not replace other rights or procedures available to parents or custodians.

Under the act, a parent or custodian who disagrees with a decision made by a county council regarding services for a child may initiate the dispute resolution process. Not later than 60 days after the parent or custodian initiates the process, the council must make findings regarding the dispute and issue a written determination of its findings. The act also provides that each agency that is the subject of the dispute must continue providing its services or funding for its services to the child or family for the duration of the dispute resolution process.

Use of money in the indigent drivers alcohol treatment funds

(R.C. 4511.191)

Each county has established an indigent drivers alcohol treatment fund and a juvenile indigent drivers alcohol treatment fund. In addition, each municipal corporation that has a municipal court has established an indigent drivers alcohol treatment fund. An expenditure from any of these funds may be made only upon the order of a county, juvenile, or municipal court judge and only for payment of (1) the cost of a person's attendance at an alcohol and drug addiction treatment program if the person is a state or municipal OVI offender, is ordered by the court to attend the treatment program, and is determined by the court to be unable to pay the cost of attendance at the treatment program, and (2) the costs of alcohol and drug abuse assessment and treatment of certain other specified persons. A court's indigent drivers alcohol treatment program is administered either by the alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services that serves the alcohol, drug addiction, and mental health service district in which the court is located.

Under the act, a county, juvenile, or municipal court judge may use money in that court's indigent drivers alcohol treatment fund to pay for the cost of the continued use of an electronic continuous alcohol monitoring device by an offender, in conjunction with an approved treatment program, when such use is determined clinically necessary by the treatment program and when the court determines that the offender or juvenile traffic offender is unable to pay all or part of the daily monitoring of the device.

If a court's indigent drivers alcohol treatment fund has a surplus as determined by current law, the act permits a court to expend the surplus to pay all or part of the cost of purchasing electronic continuous alcohol monitoring devices.

Bids and bid guaranties for county purchases

(R.C. 307.88)

The act alters the Competitive Bidding on County Purchases Law to require that a bid in excess of \$25,000 (instead of \$10,000 as provided under prior law) for a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement must meet the bid guaranty requirements of the Public Improvements Law, which mandates that a bid be accompanied by a specified bond, or certified check, cashier's check, or letter of credit, conditioned as prescribed in the Public Improvements Law. The board of county commissioners, by a unanimous vote, may permit a contracting authority to exempt bids from some or all of those bid guaranty requirements if the estimated cost is \$25,000 or

less (instead of more than \$10,000 but less than \$25,000 as provided under prior law).²⁰²

The act also specifies that if a bid is in excess of \$25,000 (instead of \$10,000 as provided under prior law) and is for any other contract authorized under the Competitive Bidding on County Purchases Law--i.e., a non-public improvement contract, it must be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association, in a reasonable amount stated in the notices advertising the proposed contract, but not to exceed 5% of the bid, conditioned that the bidder, if the bidder's bid is accepted, will execute a contract in conformity to the invitation for bids and the bid.

Law libraries

Overview; addition of materials and equipment to free of charge use

(R.C. 3375.48 and 3375.55)

Continuing law requires the law library association in each county ("association") that receives fines and penalties, and moneys arising from forfeited bail, under certain statutes to furnish to all members of the General Assembly, the officers of the county in which the association is located, the officers of the townships and municipal corporations in that county, and the judges of the courts in that county admission to the association's law library and the use of its books free of charge. The act adds materials and equipment of the law library to the free of charge use.

Setting of compensation for law librarians

(R.C. 3375.48)

Under continuing law, an association's board of trustees appoints a librarian and assistant librarians for its law library. Prior law gave the judges of the court of common pleas of the county the power to fix the compensation of the librarian and up to two assistant librarians, and that compensation was payable 100% from the county treasury. Under the act, this compensation fixing power is transferred from the judges of the court of common pleas to the association's board of trustees. In addition, the board is given the duty of paying the compensation.

²⁰² A "contracting authority" is any board, department, commission, authority, trustee, official, administrator, agent, or individual with authority to contract for or on behalf of the county or any county agency, department, authority, commission, office, or board (R.C. 307.92--not in the act).

Provision of space and utilities

(R.C. 3375.49)

Under continuing law as modified by the act, the board of county commissioners must provide suitable rooms with sufficient and suitable bookcases in the county courthouse for the use of the association's law library or, if there are no suitable rooms in the courthouse, any other suitable rooms in the county seat with sufficient and suitable bookcases. Additionally, the board must provide heat and light for the rooms. This provision must be 100% at the county's expense.

The act generally continues these responsibilities by requiring the board of county commissioners to provide a law library association with *space and utilities* for its law library in the county courthouse or in any other building in the county. However, the act also provides that, if at any point the association's board of trustees rents, leases, lease-purchases, or otherwise acquires space for its law library, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide space for the use of its law library, the board of county commissioners has no further obligation to provide the association with the space and utilities.

Payment of compensation and costs

(R.C. 3375.48, 3375.49, and 3375.54)

As part of the previously discussed changes made by the act, responsibility for payment of the *compensation* of the librarian and up to two assistant librarians of an association's law library, as well as the *costs* of the space, utilities, furniture, and fixtures of an association's law library is gradually transferred from the board of county commissioners to the association's board of trustees pursuant to the following schedule:

Calendar Year	Responsibility to pay the compensation and costs
Through 2006	The board of county commissioners must pay 100%.
2007	The board of county commissioners must pay 80%, and the association's board of trustees must pay 20%.
2008	The board of county commissioners must pay 60%, and the association's board of trustees must pay 40%.
2009	The board of county commissioners must pay 40%, and the association's board of trustees must pay 60%.
2010	The board of county commissioners must pay 20%, and the association's board of trustees must pay 80%.
2011 and thereafter	The association's board of trustees must pay 100%.

However, if at any point the association's board of trustees rents, leases, lease-purchases, or otherwise acquires space for its law library, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide space for the use of its law library, the board of county commissioners has no further responsibility to pay the compensation and costs in accordance with the latter schedule.

Task Force on Law Library Associations

(Section 503.06)

Appointments. The act creates the Task Force on Law Library Associations, which is comprised of the following 13 members:

- One member of the House of Representatives appointed by the Speaker of the House;
- One member of the House of Representatives appointed by the Minority Leader of the House;
- One member of the Senate appointed by the President of the Senate;
- One member of the Senate appointed by the Minority Leader of the Senate;
- Three members appointed by the Ohio Judicial Conference, two of whom must be judges who are members of the Conference and one of whom must be a law librarian associated with an association;
- Three members appointed by the County Commissioners' Association of Ohio;
- Three members appointed by the Ohio State Bar Association, two of whom must be attorneys licensed to practice law in Ohio and one of whom must be a law librarian associated with an association.

Appointments to the Task Force must be made by September 1, 2005, and vacancies are to be filled in the manner provided for original appointments.

Task force duties. The act charges the Task Force with the following duties:



- Gather information on and study the current state of the associations, with particular emphasis on the structure, funding, and administration of their law libraries, and on the effect of technology on, and access to, their law libraries.
- Make recommendations on the structure, funding, and administration of these law libraries presently and over the next five calendar years.
- Make recommendations as to how to ensure that these law libraries remain open and may be made available to members of the public.

The Task Force must report its findings and recommendations to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Chief Justice of the Supreme Court by October 31, 2006.

The Task Force ceases to exist upon the submission of its report and is not subject to the Sunset Review Law.

Spending authority of county boards of elections

(R.C. 305.171, 3501.141(A) and (B), 3501.17(A), and 5705.40)

Insurance law changes

Changes in the Board of Elections Law. Generally continuing law authorizes the board of elections of a county to contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs and that may provide sickness and accident insurance, or group life insurance, or a combination of any of those types of insurance or coverage for the *full-time employees* of the board and their *immediate dependents*. The act *qualifies* this independent authority to contract, purchase, or otherwise procure and pay all or any part of the cost of those group health and life insurance coverages by specifying that it applies only when the board of county commissioners, by resolution, *denies* a described coverage to full-time employees of the board of elections (see below) (R.C. 3501.141(A)).

In addition, generally continuing law authorizes a board of elections to procure and pay all or any part of the cost of group hospitalization, surgical, major

medical, or sickness and accident insurance or a combination of those types of insurance or coverage for the *board members* and their *immediate dependents* when a member's term begins. The act *qualifies* this authority too by specifying that the board of elections may exercise it only with the *approval* of the board of county commissioners (R.C. 3501.141(B)).

Changes in the Board of County Commissioners Law. The act explicitly includes board of elections' employees and their immediate dependents as well as board members and their immediate dependents under the provisions of continuing law that authorize boards of county commissioners to procure and pay all of part of the cost of group health and life insurance coverages for county officers and employees and their immediate dependents (R.C. 305.171). This presumably would be the authority that, if not exercised by a board of county commissioners with respect to full-time employees of a board of elections or members of a board of elections, might result in a qualification under R.C. 3501.141(A) or (B) not precluding a board of elections itself from contracting, purchasing, or otherwise procuring and paying all or any part of the cost of a group health or life insurance coverage.

Mandamus actions

Continuing law requires the expenses of a board of elections to be paid from the county treasury in the same manner that other county expenses are paid--pursuant to board of county commissioners' appropriations. Under former law, if a board of county commissioners failed to appropriate an amount sufficient to provide for the *necessary and proper expenses* of the board of elections, the board of elections could apply to the court of common pleas (i.e., commence a mandamus action) to fix the amount necessary to be appropriated.

The act generally limits the authority of a board of elections to apply to the court of common pleas by specifying that the mandamus action must be based on the board of county commissioners' failure to provide for the necessary and proper expenses of the board of elections *pertaining to the conduct of elections* and that those expenses *do not include* expenses for employee compensation and benefits incurred in the conduct of elections (R.C. 3501.17(A)).

Incurring obligations and fund transfers

Continuing law prohibits a board of elections from incurring any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefor to meet the obligation. The act retains that prohibition and includes an express cross-reference to the provision of the Tax Levy Law that requires the fiscal officer of a political subdivision (in this case, the county

auditor) to certify that sufficient funds are available and unencumbered before any contract or expenditure of money is made. (R.C. 3501.17(A).)

Continuing law authorizes transfers of funds by resolution or ordinance (i.e., by the legislative authority of a political subdivision).²⁰³ Under the act, transfers from one appropriation item of a board of elections to another continue to be made by resolution of the board of county commissioners, but the act generally requires a board of county commissioners, upon the request of a board of elections, to adopt a resolution to transfer funds. The only exception to this requirement is when the board of county commissioners determines that the transfer is sought for the purpose of providing employee bonuses or salary increases other than increases necessary to reimburse employees for overtime worked. (R.C. 3501.17(A) and 5705.40.)

County Electronic Voting Machine Maintenance Fund

(R.C. 3506.17)

Under the federal Help America Vote Act of 2002 (HAVA), the state receives money from the federal government for the purpose of implementing its provisions in Ohio (e.g., purchasing voting machines, providing for voter education, etc.). Former law required that all moneys so received by the state that were not approved for release by the Controlling Board as of the first federal election that occurred after January 1, 2006, be deposited in the state treasury to the credit of the County Electronic Voting Machine Maintenance Fund. The Secretary of State was required to adopt rules for the fair and equitable distribution of the moneys in the Fund, which could only be used for the purposes for which they were received under HAVA and only be expended pursuant to a plan approved by the Controlling Board. The act abolishes the Fund-related provisions as part of corresponding changes in its appropriation provisions related to the Secretary of State's office for FY 2006 and FY 2007.

Direct recording electronic voting machine acquisition requirements

(Section 514.03)

Among other provisions, the federal Help America Vote Act of 2002 (HAVA), provides funds that states may use to upgrade existing or acquire new voting systems. That act requires states intending to use federal funds to acquire voting machines to adopt a state plan, which then governs the acquisition of those machines. Under the Ohio State Plan, certain counties are scheduled to acquire new voting systems using funds made available through HAVA. The Secretary of

²⁰³ See 1994 Op. Atty Gen. No. 94-007.

State, pursuant to that plan, has specified the types of voting machines, marking devices, or automatic tabulating equipment that the eligible counties may acquire.

The act permits a county that is scheduled to acquire voting machines, marking devices, or automatic tabulating equipment with HAVA funds and that selects direct recording electronic (DRE) voting machines as the primary voting system to be used in the county, and not only for accessibility for individuals with disabilities, to acquire those DRE voting machines using HAVA funds only if the county acquires sufficient DRE voting machines to meet the minimum number required to be established by the Secretary of State.

The Secretary of State is required to establish, for each county, a minimum number of DRE voting machines that the county must acquire to be eligible to acquire DRE voting machines as the county's primary voting system using funds made available through HAVA. The minimum for each county must be calculated as follows:

(1) The total number of registered voters in the county on January 1, 2005, must be multiplied by the statewide percentage of voters who were purged from the official lists of registered voters during the 2001 calendar year.

(2) The number resulting from the previous calculation must be subtracted from the total number of registered voters in the county on January 1, 2005.

(3) The number resulting from the previous calculation must be divided by 175.

(4) Any fraction resulting from the previous calculation must be rounded up to the next whole number.

Treatment of political subdivision insurance and self-insurance costs and deductibles

(R.C. 2744.08 and 2744.082)

Under continuing law, a political subdivision is permitted to use public funds to obtain insurance to cover the subdivision and its employees' potential liability for injury, death, or loss to persons or property caused by the subdivision or its employees in connection with a governmental or proprietary function. (As used in this law, an "employee" includes an elected or appointed official.) In addition, regardless of whether the subdivision obtains such insurance, it may establish and maintain a self-insurance program for that potential liability. The subdivision is permitted to allocate the costs of the insurance and self-insurance programs among the funds or accounts in the subdivision's treasury on the basis of relative exposure and loss experience.

In addition to the allocation among funds or accounts of insurance and self-insurance program costs, the act permits the subdivision to require any deductibles under either type of program to be paid from funds or accounts in the subdivision's treasury from which a loss was directly attributable. The act further provides that if the subdivision makes such an allocation as provided under continuing law or requires the payment of deductibles from specific funds or accounts as provided in the act, the subdivision's fiscal officer, pursuant to an ordinance or resolution of the subdivision's legislative authority, must transfer amounts equal to those costs or deductibles from the funds or accounts to the subdivision's general fund if both of the following apply: (1) the subdivision requests payment from the employee responsible for the funds or accounts for those costs or deductibles, and (2) the employee receiving the request fails to remit payment within 45 days after the date the request is received. The act also exempts these transfers by the fiscal officer from continuing law that otherwise governs transfers between funds of a political subdivision.

Local Government and Library Revenue Distribution Task Force

(Section 503.12)

The act creates a Local Government and Library Revenue Distribution Task Force consisting of the following members:

- Five members of the House of Representatives appointed by the House Speaker, with at least two appointments from the minority party.
- Five members of the Senate appointed by the Senate President, with at least two appointments from the minority party.
- One nonvoting member appointed by the Ohio Library Council.
- One nonvoting member appointed by the County Commissioners' Association of Ohio.
- One nonvoting member appointed by the Ohio Municipal League.
- One nonvoting member appointed by the Ohio Township Association.
- One nonvoting member appointed by the Ohio Parks and Recreation Association.

All of the appointments must be made within 30 days after the act's effective date. Vacancies on the Task Force must be filled in the same manner as the original appointments. The Task Force must designate one of its members as its chairperson. The Tax Commissioner will call the Task Force's initial organizational meeting.

The Task Force must study potential sources of state funding for the Local Government Fund, the Library and Local Government Support Fund, and the Local Government Revenue Assistance Fund that have the capacity to allow for growth in funding levels and to provide stability in funding levels. Additionally, the Task Force must consider changes to the codified funding formulae for the local government funds that reflect Ohio's tax code reform, and must seek interested parties' input and testimony. The Task Force must submit a report to the Governor and the General Assembly not later than December 1, 2006, setting forth its recommendations for sources for the three funds and suggested legislation to implement the recommendations. The Task Force will cease to exist upon issuing its report. The Tax Commissioner must provide the Task Force staff assistance, and it can also request assistance from the Legislative Service Commission.

Boards of trustees for certain regional transit authorities

(R.C. 306.331; Section 503.15)

Under continuing law, a regional transit authority (RTA) may be created by any county, any two or more counties, municipal corporations, or townships, or any combination of these entities for one or more of a variety of purposes generally pertaining to the provision of transit facilities. The board of trustees of an RTA created by the exclusive action of a county must be appointed by the board of county commissioners of that county. Under continuing law to which the act creates an exception, a board of trustees created by two or more political subdivisions must consist of the number of members having the qualifications provided for in the resolutions or ordinances creating the RTA. Similarly, the creating resolutions or ordinances, or any amendments to them, may establish which public officers will have appointing authority for the members of the board of trustees. Continuing law as modified by the act authorizes those appointing authorities to remove a trustee at any time for misfeasance, nonfeasance, or malfeasance in office.

The act prescribes a distinct appointment method for any RTA created by one county with a population of at least 500,000 and two municipal corporations. In this situation, the board of trustees must consist of nine members, six appointed by the board of county commissioners, two appointed by the most populous municipal corporation included in the RTA, and one appointed by the second most populous municipal corporation in the county, regardless of whether that second

most populous municipal corporation is a member of the RTA. A trustee appointed under this method serves at the pleasure of the appointing authority.

Trustees appointed under the act must take an oath or affirmation to honestly, faithfully, and impartially perform the duties of office and to have no personal interest in any contract let by the RTA. A majority of the board of trustees constitutes a quorum, and an affirmative vote of the quorum is necessary for any action to be taken by the RTA. No vacancy in the board impairs the rights of a quorum to exercise all rights and perform all the duties of the RTA.

Once the trustees are appointed under the act, the following apply: (1) the trustees must serve staggered initial terms followed by three-year terms (eligibility for reappointment dependent on the creating resolutions or ordinances), (2) the trustees must appoint a president and vice-president from its members annually, and (3) the trustees must appoint a nonmember secretary-treasurer as fiscal officer, who is to serve at the pleasure of the board.

The board of trustees must hold regular and special meetings in a time, place, and manner established in its bylaws. The board meetings must be open to the public except executive sessions, as set forth in the Open Meetings Law. Board members are entitled to receive from the RTA reasonable expenses for performing their duties. The secretary-treasurer must receive the compensation fixed by the board.

Finally, the act provides that, on its effective date, the existing appointment and removal provisions established by the resolutions and ordinances governing the existing board of trustees of any RTA affected by the act are void. The county and municipal corporations with authority to appoint the board members must appoint a new board of trustees within the first five days after the act's effective date in accordance with its distinct appointment method. On that fifth day, the affected RTA's board existing on the act's effective date is dissolved, and the board appointed under the act must meet and organize. However, the act does not affect the validity of any action of the affected RTA's board taken before the act's effective date.

Metropolitan housing authorities

(R.C. 3735.27)

Continuing law

Under continuing law, all metropolitan housing authorities must have five or six members who are residents of the district in which they serve. Members are appointed by local officials as specified in that law. Membership requirements

and appointing authorities differ for the categories of metropolitan housing authorities.

Former law also required that an additional two members be appointed to a metropolitan housing authority for a district that had 300 or more assisted housing units and that did not have at least one member who resided in an assisted housing unit. The chief executive officer of the most populous city in the district was required to appoint one of the additional members, who was required to reside in an assisted housing unit, and the board of county commissioners was required to appoint the other additional member, who did not need to reside in an assisted housing unit.

Changes made by the act

In place of former law, the act requires one "resident member" to be appointed to any metropolitan housing authority only when required by federal law. That resident member must be appointed by the chief executive officer of the most populous city in the district for a five-year term. The act also specifies that any metropolitan housing authority to which two additional members were appointed pursuant to former law must continue to have those two additional members. Vacancies in their positions must be filled in the manner provided for their original appointment.

Local funding options for construction of convention center

(R.C. 307.695)

Continuing law authorizes a board of county commissioners to enter into an agreement with a convention and visitors' bureau operating in the county under which the bureau agrees to construct and equip a convention center with revenues from an excise tax the board levies on lodging transactions in the county. Continuing law defines "convention center" as any structure expressly designed and constructed for the purposes of presenting conventions, public meetings, and exhibitions; it includes parking facilities that serve the center and any personal property used in connection with any such structure or facilities.

The act authorizes a board of county commissioners in a county with a population of 1.2 million or more, in addition to its authority under current law as described above, to establish and provide "local funding options" for constructing and equipping a convention center.

Local funding options for support of arts organizations

(R.C. 3381.15)

Continuing law authorizes the board of county commissioners of any county to appropriate annually from available moneys to the credit of the county general fund that portion of the expense of a regional arts and cultural district that the county is required to pay as provided in the resolution that created or enlarged the district. A regional arts and cultural district may consist of a single county, or of two or more counties, municipal corporations, or townships, or of any combination of these political subdivisions and is authorized to make grants to support (1) the operating or capital expenses of arts or cultural organizations located within the district or (2) acquiring, constructing, equipping, furnishing, repairing, remodeling, renovating, enlarging, improving, or administering artistic or cultural facilities.

The act authorizes a board of county commissioners in a county with a population of 1.2 million or more, in addition to its authority described above, to establish and provide local funding options for the support of arts and cultural organizations operating within the regional arts and cultural district in which the county is included.

Governing board for certain regional arts and cultural districts

(R.C. 3381.02, 3381.04, 3381.05, 3381.06, and 3381.07)

Under continuing law modified by the act, a regional arts and cultural district is a political subdivision that may be created by one county, or by two or more counties, municipal corporations, or townships, or by any combination of counties, townships, and municipal corporations--provided certain contiguous requirements are satisfied when multiple political subdivisions are involved. The district may be created pursuant to one of two alternative procedures in R.C. 3381.03 (not in the act) and R.C. 3381.04. If created under R.C. 3381.03, the district must have a *board of trustees* appointed in a specified manner (R.C. 3381.05). But, if the district is created under R.C. 3381.04--which applies only to counties with a population of 500,000 or more--by one such county, the *board of county commissioners* of that county must serve as the district's governing board.

The act provides instead that, for a regional arts and cultural district created under R.C. 3381.04's alternative procedure in a county with a population of 500,000 or more, the governing board is to be a three-member board of trustees appointed by the board of county commissioners. The members of such an appointed board must satisfy the same qualifications, and serve in the same

manner and with the same duties, as continuing law provides for the appointed boards of trustees of other regional arts and cultural districts.

Report on county and large city cost savings

(Section 557.12.01)

The act requires each county and each city with a population of 100,000 or more to submit to the Auditor of State a report that does all of the following with respect to the county or city: (1) describes efforts to reduce costs by consolidating services and engaging in regional cooperation, (2) specifies cost savings resulting from consolidation of services and regional cooperation, and (3) describes future plans with respect to consolidating services and engaging in regional cooperation. The report must be submitted on or before October 1, 2005.

The description in the report of future plans with respect to consolidating services must address plans for consolidation of fire, law enforcement, water, sewer, and solid waste services provided by the county or city. The report also must describe any efforts already undertaken to analyze how these future consolidation efforts would impact costs and affect existing collective bargaining agreements. If no such analyses have been undertaken at the time the report is filed, the report must establish a timeline for their completion.

The description of future plans in the report with respect to regional cooperation must address plans for cooperation with one or more neighboring political subdivisions in the financing of operations that serve all of the subdivisions. The report also must describe future plans, if any, to cooperate with other political subdivisions in the consolidation of purchasing or construction functions.

The Auditor may use the report only for informational purposes; the Auditor cannot approve or disapprove any plan described in a report.

Annual Local Government Inventory and Road Report

(R.C. 5549.01, 5571.13, and 5573.13)

Continuing law authorizes the board of county commissioners to purchase machinery, tools, or other equipment for county highway, bridge, and culvert-related purposes. The board also may acquire automobiles, motorcycles, or other conveyances and maintain them for official use by the county engineer. These items belong to the county but are under the care and custody of the county engineer. The act eliminates a prior requirement for the county engineer to file an annual, written inventory of these items with the board of county commissioners. However, general law unaffected by the act continues to require each county



officer or department head to file with the board an annual inventory of materials, machinery, tools, and other county supplies under the person's jurisdiction (R.C. 305.18, not in the act).

The act also eliminates a prior requirement for a board of township trustees to make an annual report to the county engineer, on forms furnished and prescribed by the county engineer, concerning the highways, bridges, and culverts within its township.

OHIO LOTTERY COMMISSION

- Creates in the state treasury the Charitable Gaming Oversight Fund in which the State Lottery Commission must deposit money it receives from the Attorney General under an agreement between the two agencies for the Commission to carry out certain duties under the Charitable Gaming Law on the Attorney General's behalf.
- Authorizes money in the Fund not necessary for the Commission to perform its agreed to charitable gaming oversight, licensing, and monitoring functions to be transferred by the Office of Budget and Management to the Lottery Profits Education Fund.

Creation of the Charitable Gaming Oversight Fund

(R.C. 3770.061)

The act creates in the state treasury the Charitable Gaming Oversight Fund. The State Lottery Commission must credit to the Fund any money it receives from the Attorney General's Office under any agreement the Commission and the Office have entered into under a provision of the Charitable Gaming Law that authorizes the Attorney General to enter into a written contract with another state agency to delegate to that agency powers of the Attorney General under the Law (R.C. 2915.08(I)--not in the act). The Commission must use money in the Fund to provide oversight, licensing, and monitoring of charitable gaming activities in accordance with the agreement and the Law.

Not later than July 1 of each fiscal year or as soon as possible thereafter, the Commission may certify to the Office of Budget and Management (OBM) any unobligated fund balances not necessary to be used for the Fund's purposes. The Commission may request OBM to transfer these balances to the Lottery Profits



Education Fund, which under continuing law must be used solely for the support of elementary, secondary, vocational, and special education programs or as provided in applicable bond proceedings for the payment of debt service on obligations issued to pay the cost of capital facilities.

DEPARTMENT OF MENTAL HEALTH

- Requires that the Department of Mental Retardation and Developmental Disabilities transfer the administrative duties related to the operation of the Ohio Family and Children First Cabinet Council to the Department of Mental Health.
- Creates the Family and Children First Administration Fund to fund the administrative costs of the Ohio Family and Children First Cabinet Council.
- Revises the method for determining the amount a patient, patient's estate, or liable relative is to be charged for inpatient care and treatment at a hospital under the control of the Department of Mental Health.
- Requires the Department of Mental Health, with other state or local government agencies that purchase prescription drugs, to study intrastate consolidated prescription drug purchasing systems and to submit a report of its findings by not later than January 1, 2006.

Transfer of Ohio Family and Children First Cabinet Council administrative duties

(Section 209.09.16)

The act requires the Department of Mental Retardation and Developmental Disabilities to transfer the administrative duties related to the operation of the Ohio Family and Children First Cabinet Council to the Department of Mental Health. As part of the transfer, all of the following must occur on July 1, 2005, or as soon as possible thereafter as the Departments are able to make the transfers:

(1) Individuals employed by the Department of Mental Retardation and Developmental Disabilities on June 30, 2005, to perform administrative functions for the Cabinet Council must be transferred to the Department of Mental Health.



(2) The assets, liabilities, equipment, and records, irrespective of form or medium, related to the Cabinet Council's duties are to transfer or be transferred to the Department of Mental Health.

(3) The Department of Mental Health must assume the obligations of the Cabinet Council's administrative duties.

Family and Children First Administration Fund

(R.C. 121.373)

The act creates the Family and Children First Administration Fund in the state treasury. The fund is to consist of money that the Director of Budget and Management transfers from one or more funds of one or more agencies represented on the Ohio Family and Children First Cabinet Council. The Director is permitted to transfer only money that state or federal law permits to be used for the Cabinet Council's administrative duties. Money in the fund must be used to pay the Cabinet Council's administrative costs.

Billing methodology for Department of Mental Health hospital inpatients

The act establishes a methodology, separate from the methodology applicable to both the Department of Mental Health and the Department of Mental Retardation and Developmental Disabilities under former law, for the Department of Mental Health to follow in determining how much a patient, patient's estate, and liable relatives must be charged for a patient's *inpatient* care and treatment at a hospital established, controlled, or supervised by the Department of Mental Health. The separate methodology applicable to inpatients appears in a new part of R.C. Chapter 5121. beginning at R.C. 5121.30.

The billing methodology applicable to both departments under former law remains applicable to residents in facilities under the jurisdiction of the Department of Mental Retardation and Developmental Disabilities.

In addition, because a separate billing methodology in another part of R.C. Chapter 5121. is established for inpatients, the act repeats miscellaneous provisions of law that were applicable to both departments in the new part of R.C. Chapter 5121. to show that these provisions still apply not only to residents, but to inpatients as well. These provisions deal with the following:

- Traveling and incidental expenses incurred in conveying patients to hospitals and clothing them (R.C. 5121.31);
- Discovery tools the Department may use to investigate a patient's, estate's, or liable relative's financial condition (R.C. 5121.38);

- Extended payment plans negotiated between the Department and the patient, patient's estate, or patient's liable relative (R.C. 5121.44);
- The judge's duty to make a report of the financial condition of the patient and any liable relative at the time of a patient's commitment to a hospital pursuant to judicial proceedings (R.C. 5121.50);
- Appointment of a guardian on the petition of a Department agent (R.C. 5121.51);
- Burial and cremation of indigent persons who die while admitted to a hospital (R.C. 5121.53);
- Recovery by a liable relative or parent from certain persons for amounts paid by that relative or parent for a patient's care (R.C. 5121.54).

Determination of applicable per diem charge and ancillary per diem rate (R.C. 5121.32). The act requires the Department of Mental Health to annually determine the applicable per diem charge and ancillary per diem rate for each hospital operated by the Department. In determining this charge and rate, the Department must consider the average actual per diem cost of maintaining and treating a patient at the hospital or, at the Department's discretion, the average actual per diem cost of maintaining and treating a patient in a unit of the hospital.

General rule--full applicable per diem charge applies (R.C. 5121.33 and 5121.34). The general rule under the new methodology is that that unless certain exceptions apply (see "**Exceptions to the general rule**," below), the Department of Mental Health must charge a patient, patient's estate, or liable relative an amount equal to the sum of the following:

- The applicable per diem charge multiplied by the number of days the patient was admitted to the hospital;
- An amount that was previously billed but not paid.

As in former law, a patient, patient's estate, and liable relatives are jointly and severally liable for the total amount owed as determined by the Department.

Exceptions to the general rule (R.C. 5121.35, 5121.43, 5121.46, 5121.47, 5121.49, and 5121.52). The Department of Mental Health must charge a person an amount that differs from the amount computed under the general rule, however, if any of the following is true:

- The person qualifies for a discount;



- The patient has insurance coverage that pays for mental health services;
- The person is a member of a family unit that has more than one patient admitted to a hospital;
- The person has paid all amounts charged by the Department for the care and treatment of a particular patient for 15 consecutive years;
- The person has paid amounts charged by the Department for the care and treatment of more than one patient for a total of 15 consecutive years;
- The person has petitioned the Department for a release from, or a modification or cancellation of, charges and the petition has been granted;
- The patient or liable person has died and the Department has decided to waive the presentation of any claim for support against the decedent's estate because a dependent of the person will directly benefit from the person's estate.

Discounts (R.C. 5121.36, 5121.37, 5121.40, 5121.41, 5121.42, and 5121.55). A person may qualify for a discount either by filing an application for a discount with the Department of Mental Health within 120 days of admission to a hospital or by being assessed as eligible for a discount by the Department through a financial assessment process. The act provides that the Department must charge a person an amount discounted from the amount computed pursuant to the general rule for the first 30 days of inpatient care and treatment if the following are true:

- The person's countable assets have a value not greater than an amount equal to 50% of the gross annual income that corresponds with the family size of the patient, estate, or liable relative under the federal poverty guidelines;
- The person's gross annual income does not exceed 400% of the federal poverty level.²⁰⁴

The amount of the discount for the first 30 inpatient days varies based on the person's annual gross income and the number of days the person is admitted.

²⁰⁴ Under the federal poverty guidelines for 2005, a single person with no dependents who resides in Ohio would qualify for a discount if the person's countable assets do not exceed \$4,785 and gross annual income does not exceed \$38,280.

For example, a single person with no dependents who has an annual gross income no greater than 175% of the federal poverty level receives a 100% discount for the first 14 days of inpatient care and treatment while a similar single person with an annual gross income at 399% of the federal poverty level receives a 10% discount for the first 14 days.

A patient who is charged a discounted rate for the first 30 inpatient days and has an annual gross income not greater than 175% of the federal poverty level can not be charged beyond the 30th day. A patient who similarly qualified for a discount and has an annual gross income greater than 175% of the federal poverty level must be charged an amount equal to the sum of the following for the days the patient is admitted beyond the 30th day:

- The ancillary per diem rate multiplied by the number of days the patient was admitted to the hospital;
- An amount that was previously charged but not paid.

A patient, patient's estate, or liable relative ceases to be eligible for a discount when that person or estate accumulates countable assets that exceed an amount equal to 50% of the difference between the following:

- The gross annual income that corresponds with a family size of two persons at 100% of the federal poverty level for Ohio;
- The gross annual income that corresponds with a family size of one person at 100% of the federal poverty level for Ohio.

For purposes of making this calculation, the act provides that money needed to meet the patient's needs and burial fund as determined by a needs assessment conducted by the Department must be excluded.

Voluntary payments (R.C. 5121.48). The act provides that even if a patient, patient's estate, or liable relative is charged a discounted rate, the Department of Mental Health must accept voluntary payments made by any of these persons that are in excess of the discounted rate.

Insurance coverage (R.C. 5121.43). If a patient is covered by an insurance policy or other contract that provides for payment of expenses associated with the care and treatment of mental illness, the act provides that the new billing methodology is inapplicable to the extent that the policy or contract is in force. The patient's insurer or other third party payor must pay for the patient's support obligation in amounts equal to the lesser of the amount computed under the

general rule (see "General rule--full applicable per diem charge applies," above) or the benefits provided under the policy or contract.

An insured, policy owner, or other person must assign payment of all assignable benefits directly to the Department of Mental Health and pay to the Department, within ten days of receipt, all insurance or other benefits received as reimbursement or payment for expenses incurred by the patient or for any other reason. If the insured, policy owner, or other person refuses to assign payment to the Department or refuses to pay received reimbursements or payments to the Department within ten days of receipt, the total liability of the insured, policy owner, or other person is an amount equal to the per diem charge for the hospital where the patient was admitted multiplied by the number of days the patient was admitted. Despite this provision, the act limits an insurer's or payor's liability by providing that in no event can total liability exceed the Department of Mental Health's actual cost of providing care and treatment to the patient.

The act also provides that the Department may disqualify patients and liable relatives who have retained third party funds for future discounts. The Department may request that the Attorney General petition a court to compel the insured, owner, or other person having an interest in the policy or contract to comply with the foregoing assignment requirements.

Delinquent payments (R.C. 5121.45). The act requires the Department of Mental Health to commence an action to enforce the collection of a delinquent payment²⁰⁵ not later than six years after the later of the following:

- The last date the Department received money to satisfy the delinquent payment;
- The date the charge was due.

In all actions to enforce the collection of delinquent payments, a court must receive into evidence the proof of claim document made by the Department, as the state party, together with all debts and credits. The act provides that the proof of claim document is prima-facie evidence²⁰⁶ of the facts stated in the document.

²⁰⁵ *The act defines "delinquent payment" as an amount owed by a patient, patient's estate, or liable relative to the Department of Mental Health for which the person has failed to do either of the following not later than 90 days after the service associated with the charge was incurred: (1) make payment in full, or (2) make payment in accordance with the terms of an extended payment agreement entered into under the act.*

²⁰⁶ *"Prima-facie evidence" means the document, "on its face," is sufficient to prove the facts stated in it unless there is substantial contradictory evidence.*

Billing methodology for state-operated community mental health services clients

(R.C. 5121.55)

Law unchanged by the act provides that the cost for support of a client of state-operated community mental health services is an amount determined using guidelines the Department must issue. The guidelines must be based on cost findings and rate-settings applicable to such services.

The act moves this law from R.C. 5121.01 to the latter part of R.C. Chapter 5121. that pertains to the Department of Mental Health.

Consolidated prescription drug purchasing program

(Section 209.06.15)

The act requires the Department of Mental Health, with the Bureau of Workers' Compensation, Department of Rehabilitation and Correction, Department of Youth Services, and any other state or local government agency that purchases prescription drugs (other than the Department of Job and Family Services, for purposes of the Medicaid program) to do the following:

(1) Study intrastate consolidated prescription drug purchasing systems currently in effect in other states;

(2) Estimate potential cost-savings and other advantages, including any potential disadvantages, that might result if Ohio were to consolidate its executive agencies' prescription drug purchases under a prescription drug purchasing program;

(3) Design a consolidated prescription drug purchasing program appropriate to the prescription drug purchasing needs of the state.

The Department must, by not later than January 1, 2006, prepare and submit a report of its findings to the Governor, the Speaker and Minority Leader of the House, and the President and Minority Leader of the Senate. The report must include an analysis of any costs Ohio may incur in creating a consolidated prescription drug purchasing program.

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

- Terminates the community alternative funding system for services for persons with mental retardation or a developmental disability effective July 1, 2005.
- Repeals state law governing the certification of habilitation centers.
- Eliminates state law giving county boards of mental retardation and developmental disabilities (county MR/DD boards) Medicaid local administrative authority regarding Medicaid case management services.
- Eliminates a requirement that the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD) pay the nonfederal share of Medicaid case management services if the services are provided by an agency with which ODMR/DD has contracted to provide protective services.
- Permits the Director of ODMR/DD to enter into an agreement with a county board of MR/DD under which ODMR/DD pays the nonfederal share of Medicaid home and community-based services.
- Provides that a certified habilitation center may provide Medicaid case management services until the earlier of (1) an amendment to the state Medicaid plan that provides that only county MR/DD boards may provide Medicaid case management services and (2) the habilitation center ceases to meet the certification requirements.
- Eliminates a requirement that ODMR/DD adopt rules governing contracts between a county MR/DD board and a provider of services to individuals with mental retardation or a developmental disability.
- Increases the administrative fee county MR/DD boards are charged for Medicaid paid claims for case management services and ODMR/DD-administered home and community-based services to 1½% (from 1%) of the total value of paid claims; clarifies what services are subject to the fee; and changes how ODMR/DD and the Department of Job and Family Services may use moneys collected from the fee.

- Authorizes a county MR/DD board, through the next biennium, to give priority for services to no more than 400 individuals under age 22 who have service needs of an unusual scope or intensity due to a mental or physical condition.
- Authorizes a county MR/DD board to continue to use, until December 31, 2007, criteria specified in rules to determine, when two or more individuals qualify for priority on a waiting list for home and community-based services, the order in which the individuals will be given priority.
- Revises the law governing the certification of home and community-based services provided under a Medicaid waiver administered by ODMR/DD.

Community alternative funding system terminated

(R.C. 127.16, 140.01, 3323.021, 3702.51, 3721.01, 3722.01, 3722.02, 5111.041 (repealed), 5111.042, 5123.01, 5123.041 (repealed), 5123.046, 5123.047, 5123.048 (repealed), 5123.049, 5123.0412, 5123.34, 5123.71, 5123.76, 5126.01, 5126.035, 5126.042, 5126.054, 5126.055, 5126.056, 5126.057, 5126.12, and 5705.091; Sections 206.66.78 and 209.09.09)

The act repeals a requirement that the Medicaid program cover habilitation center services. The repeal goes into effect July 1, 2005. The system by which the Medicaid program pays for habilitation center services is often referred to as the community alternative funding system (CAFS).

As part of the termination of the Medicaid program's coverage of habilitation center services, the Ohio Department of Job and Family Services (ODJFS) is no longer required to adopt rules governing this issue.²⁰⁷ State law requiring that a county board of mental retardation and developmental disabilities (county MR/DD board) or school district pay the nonfederal share of Medicaid expenditures for habilitation center services under certain circumstances is also eliminated.

²⁰⁷ *ODJFS rules governing habilitation center services provide that such services include the following services: active treatment, skills development, counseling and social work, nursing and delegated nursing, occupational therapy, physical therapy, psychology, speech language pathology and audiology, and transportation.*

Prior law defined "habilitation center services" as services provided by a habilitation center certified by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD). The act repeals law that required ODMR/DD to certify habilitation centers that met certification requirements established in ODJFS rules.

Each county MR/DD board is required to certify to ODMR/DD the average number of individuals age 16 or older receiving adult services such as job training, vocational evaluation, and community employment services daily during the first full week of October. A separate count was to be made for persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment²⁰⁸ under CAFS, persons enrolled in traditional adult services who are eligible for and enrolled in active treatment under CAFS, and persons enrolled in traditional adult services but who are not eligible for active treatment under CAFS. ODMR/DD is required to pay county MR/DD boards an annual state subsidy based on the counts. The act eliminates the references to CAFS with the result that a separate count must be made for, and the annual state subsidy is based on, persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment, persons enrolled in traditional adult services who are eligible for and enrolled in active treatment, and persons enrolled in traditional adult services but who are not eligible for active treatment.

ODJFS and ODMR/DD are authorized by the act to inform individuals who received habilitation center services under CAFS on June 30, 2005, and such individuals' representatives about alternative services that may be available to the individuals. ODJFS is permitted to require county departments of job and family services, and ODMR/DD is permitted to require county MR/DD boards, to provide such information to the individuals and their representatives.

The act provides that habilitation center services provided before July 1, 2005, are subject to the laws, rules, standards, guidelines, and orders regarding habilitation center services that were in effect at the time the services were provided.

²⁰⁸ "Active treatment" is defined as a continuous treatment program that includes aggressive and consistent implementation of a program of specialized and generic training, treatment, health services, and related services and is directed toward the acquisition of behaviors necessary for an individual with mental retardation or a developmental disability to function with as much self-determination and independence as possible and toward the prevention of deceleration, regression, or loss of current optimal functional status.

ODJFS is permitted to use funds appropriated to it for the purpose of habilitation center services, and ODMR/DD may use funds appropriated to it for such purpose, to satisfy a claim or contingent claim for habilitation center services provided before July 1, 2005, if ODJFS or ODMR/DD receives the claim or contingent claim before July 1, 2006. Neither department has any liability to satisfy (1) a claim for services provided on or after July 1, 2005 or (2) a claim for services provided before July 1, 2005, if the department receives the claim on or after July 1, 2006.

The act provides that an individual may initiate or continue a state hearing, administrative appeal, or appeal to a court of common pleas regarding a decision or order concerning habilitation center services that were available before July 1, 2005. However, a decision resulting from such a hearing or appeal may not extend an individual's eligibility for habilitation center services beyond June 30, 2005. The hearing and appeals system may not be utilized to contest the July 1, 2005, termination of CAFS.

Neither of the following are abrogated by CAFS's termination: (1) the right of recovery that ODJFS and a county department of job and family services have regarding habilitation center services provided before July 1, 2005, and (2) the right to medical support or payments from a third party that is assigned to ODJFS for such services.

The act authorizes the Director of ODJFS to adopt rules as necessary to terminate CAFS on July 1, 2005.

Medicaid case management services

(R.C. 5126.055, 5111.042, 5123.047, and 5126.057; Section 209.09.10)

Medicaid case management services are case management services provided to an individual with mental retardation or a developmental disability that the state Medicaid plan requires. Medicaid case management services, along with certain home and community-based waiver services and habilitation center services, are Medicaid-funded services that ODMR/DD administers pursuant to an interagency agreement with ODJFS.

County boards of mental retardation and developmental disabilities (county MR/DD boards) are given Medicaid local administrative authority to perform certain tasks for individuals seeking or receiving Medicaid case management, habilitation center, or ODMR/DD-administered home and community-based services. The tasks include providing ODMR/DD and ODJFS recommendations regarding services individuals should receive and, if either department approves, reduces, or terminates a service because of the county MR/DD board's

recommendation, present the department with the reasons for the recommendations at a state hearing available to individuals unhappy with a decision regarding public assistance.

As part of the termination of the Medicaid program's coverage of habilitation center services, the act repeals the law giving county MR/DD boards Medicaid local administrative authority regarding that service. The act also repeals the law giving county MR/DD boards such authority regarding Medicaid case management services. With the repeal of the authority, county MR/DD boards are no longer required to perform the tasks associated with the authority. The act maintains law giving county MR/DD boards Medicaid local administrative authority regarding ODMR/DD-administered home and community-based services.²⁰⁹

State law specifies when ODMR/DD or a county MR/DD board must pay the nonfederal share of Medicaid expenditures for Medicaid case management services. ODMR/DD is responsible for the nonfederal share if (1) the services are provided to an individual who a county MR/DD board has determined is not eligible for county MR/DD board services or (2) the services are provided to an individual by a public or private agency with which ODMR/DD has contracted to provide protective services to the individual. Otherwise, a county MR/DD board is responsible for the nonfederal share.

The act eliminates the requirement that ODMR/DD pay the nonfederal share if the services are provided to an individual by a public or private agency with which ODMR/DD has contracted to provide protective services to the individual. The act also eliminates law providing that a county MR/DD board is responsible for paying the nonfederal share only if it has Medicaid local administrative authority for Medicaid case management services.

As discussed earlier,²¹⁰ the act eliminates the requirement that ODMR/DD certify habilitation centers. The act provides, however, that a habilitation center holding on June 30, 2005, a valid certificate is permitted to provide Medicaid case management services until the earlier of the following:

²⁰⁹ *An official with ODMR/DD states that county MR/DD boards may continue to perform Medicaid local administrative authority tasks regarding Medicaid case management services as part of their Medicaid local administrative authority tasks regarding ODMR/DD-administered home and community-based services.*

²¹⁰ *See "Community alternative funding system terminated" above.*

(1) The date the United States Secretary of Health and Human Services approves an amendment to the state Medicaid plan that provides that only county MR/DD boards may provide Medicaid case management services;

(2) The habilitation center ceases to meet the certification requirements in effect on June 30, 2005.

Medicaid home and community-based services

(R.C. 5123.047 and 5123.048)

Medicaid home and community-based services are services provided to an individual with mental retardation or other developmental disability under a Medicaid waiver component administered by ODMR/DD. Under continuing law, ODMR/DD is required to pay the nonfederal share of Medicaid expenditures for home and community-based services if either of the following apply:

(1) The services are provided to an individual with mental retardation or other developmental disability who a county board of MR/DD has determined is not eligible for county board services;

(2) The services are provided to an individual with mental retardation or other developmental disability who was given priority for home and community-based services.²¹¹

The act adds a circumstance under which ODMR/DD must pay the nonfederal share of home and community-based services. ODMR/DD must pay the nonfederal share of home and community-based services if ODMR/DD enters into an agreement with a county board of MR/DD to pay for such expenditures.

Rules governing service contracts

(R.C. 5126.035)

State law establishes requirements for contracts 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 must include a general operating agreement component and an individual service needs addendum. The service contract must comply with all applicable statewide Medicaid requirements if the

²¹¹ *ODMR/DD may give priority to certain individuals on the waiting list to receive home and community-based services if the individual is seeking to move from an institutional setting to a home and community-based setting under certain conditions (R.C. 5126.042(D)(3)).*

provider is to provide home and community-based services administered by ODMR/DD or Medicaid case management services.²¹²

The act eliminates a requirement that the Director of ODMR/DD adopt rules governing the service contracts and, accordingly, a requirement that a service contract comply with the rules.²¹³

Fee increase for county MR/DD boards

(R.C. 5123.0412)

The act increases the fee that ODMR/DD must charge a county MR/DD board for case management services and ODMR/DD-administered home and community-based services. The fee is increased to 1½% (from 1%) of all paid claims for these services. The act provides that the fee is for such services provided to an individual eligible for services from the county MR/DD board rather than for which the board contracts or provides itself.

Prior law authorized ODMR/DD and ODJFS to use money raised by the fees for the administrative and oversight costs of Medicaid case management services and ODMR/DD-administered home and community-based services that a county MR/DD board develops and monitors and the board or a person and government entity under contract with the board provides.²¹⁴ The act provides that ODMR/DD and ODJFS may use the fees for the administrative and oversight costs of such services regardless of whether a county MR/DD board develops and monitors the services and provides or causes the services to be provided.

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

²¹² *The requirement to comply with all applicable statewide Medicaid requirements also applies if the provider is to provide habilitation center services.*

²¹³ *An official with ODMR/DD stated that no such rules have been adopted.*

²¹⁴ *As part of the act that eliminates habilitation center services, the act eliminates law authorizing ODMR/DD and ODJFS to use money raised by the fees to administer and oversee habilitation center services. (See "**Community alternative funding system terminated**" above.)*

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 2006 and 2007, 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 were to expire December 31, 2005. The act extends these provisions through December 31, 2007.

Home and community-based services under the Department of MR/DD

(R.C. 5123.16, 5111.871, 5123.045, 5123.41, and 5126.055; Section 209.09.27)

State law imposes conditions on an individual or private or government entity receiving payment for providing ODMR/DD-administered home and community-based services. Under prior law, the individual or entity had to be either specifically certified to provide such services, certified to provide supported living services, or licensed as a residential facility for individuals with mental retardation or a developmental disability. The act provides that the individual or entity must either be specifically certified to provide such services or a licensed residential facility, thereby eliminating the third option of being certified to

provide supported living services. The act also revises the law governing the certification of ODMR/DD-administered home and community-based services.²¹⁵

Under the act's new certification process, the Director of ODMR/DD is required to adopt rules for the certification of individuals and private and government entities that provide or propose to provide ODMR/DD-administered home and community-based services. This part of the act is unclear, however, because it provides for the Director's rules to provide for the certification of individuals and entities already certified.

The rules must establish or specify all of the following:

(1) Procedures for issuing or renewing a certificate and establishing expiration dates for currently certified providers;

(2) Procedures and criteria for denying, refusing to renew, terminating, and revoking a certificate in accordance with the Administrative Procedure Act (R.C. Chapter 119.);

(3) Procedures for suspending a certificate;

(4) Fees for issuing and renewing a certificate;²¹⁶

(5) Program services for which certification is required and provider standards for the services;

(6) Certification procedures;

(7) Procedures for ensuring that providers comply with continuing law regarding criminal records checks and the registry for individuals who have abused or neglected, or misappropriated the property of, an individual with mental retardation or a developmental disability.

²¹⁵ *The act provides that a certificate to provide ODMR/DD-administered home and community-based services issued under the prior law is to remain in effect "until ODMR/DD establishes an expiration date for the certificate" unless the certificate is voluntarily surrendered, terminated, suspended, or revoked under the act. Read literally, this means that the certificate expires when ODMR/DD determines how long current certificates should remain valid rather than on an expiration date ODMR/DD specifies. Further, the act does not provide for voluntary surrenders of certificates.*

²¹⁶ *The act requires that the fees be deposited into the state treasury to the credit of the Provider Certification Fund that the act creates. Money credited to the fund must be used solely for the operation of the new certification program for ODMR/DD-administered home and community-based services.*

The act requires that applicants for and holders of a certificate to provide ODMR/DD-administered home and community-based services must maintain a current address with the Director at all times.

A holder of a certificate to provide ODMR/DD-administered home and community-based services is prohibited from receiving payment for the services unless (1) the individuals who receive the services reside with not more than three other individuals with mental retardation or a developmental disability unrelated by blood or marriage and (2) the provider does not provide a residence to the service recipients. However, the provider may provide a residence to the service recipients if (1) the provider also resides in the residence and not more than three of the residents receive the services or (2) the provider is an association of family members related to two or more of the residents and provides services to not more than four of the residents.

Under the act, a provider's certificate may be terminated when the provider has not billed for services for more than 12 consecutive months and the provider has been notified in accordance with the Administrative Procedure Act. The Director is permitted to suspend or revoke a certificate for good cause, including misfeasance, malfeasance, nonfeasance, confirmed abuse or neglect, noncompliance with certification standards, financial irresponsibility, or other conduct ODMR/DD determines is injurious to individuals being served. Suspension or revocation is to be done in accordance with the Administrative Procedure Act. However, the Director may suspend a provider's authority to serve one or more individuals currently served by the provider in one or more counties before providing an opportunity for an adjudication in accordance with the Administrative Procedure Act when (1) the Director determines that the provider has demonstrated a pattern of serious noncompliance with certification standards or that a violation of the standards creates a substantial risk to the health and safety of an individual served by the provider, (2) the individual or guardian has been made aware of the patterns or violations and the individual or guardian does not choose to select another provider, and (3) a county MR/DD board has filed a complaint with a probate court to receive authorization to provide the individual services for the prevention, correction, or discontinuance of abuse or neglect. The Director may also suspend a provider's authority to begin to serve one or more individuals in one or more counties before providing an opportunity for an adjudication under the Administrative Procedure Act when the Director determines that the provider has demonstrated a pattern of serious noncompliance with the certification standards or that a violation of the standards creates a substantial risk to the health and safety of an individual the provider serves.

The act provides that if a provider's certificate is suspended before the provider is given an opportunity for an adjudication, ODMR/DD must notify the



provider within 24 hours of the suspension and the provider may request a hearing not later than ten days after the receiving the notice. If a timely request for a hearing is made, the hearing is to begin not later than 30 days after ODMR/DD receives the request. The hearing is to continue uninterrupted, except for weekends and legal holidays and interruptions the Director and provider agree to. If the hearing is conducted by a hearing examiner, the hearing examiner is required to file a report and recommendations not later than ten days after the close of the hearing.²¹⁷ A copy of the report and recommendations must be served on the provider by certified mail within five days of the date of its filing. The provider is permitted to file objections to the report and recommendations not later than five days after receiving them. Not later than 15 days after the report and recommendations are served on the provider, the Director must issue an order approving, modifying, or disapproving the report and recommendations.²¹⁸

The Director is required to lift an order suspending a certificate that is issued before the provider is given an opportunity for an adjudication when the provider submits an acceptable plan of compliance and ODMR/DD determines that the plan has been appropriately implemented. The Director must also lift the order, notwithstanding the pending hearing, when the Director determines that the violation that formed the basis for the order has been corrected.²¹⁹

An individual or private or government entity that has an application for a certificate denied must wait at least one year before applying again. A provider whose certificate is revoked must wait at least five years before seeking another certificate.

The act provides that the records of a *survey* of providers conducted in accordance with this provision of the act are a public record and must be made available on request of any individual or private entity. However, this provision of the act does not provide for *surveys* of providers.

The Director is prohibited from applying any provisions of continuing law regarding the certification of supported living providers to any certified provider of ODMR/DD-administered home and community-based services. It is not clear what this means. For example, it is possible that it means that certified providers

²¹⁷ *The hearing is not to be considered closed until the hearing examiner receives the transcript, if ordered, and all post-hearing briefs, if any, are timely filed.*

²¹⁸ *ODMR/DD is prohibited from approving, modifying, or disapproving the recommendations until five days after they are served on the provider.*

²¹⁹ *The act requires that the hearing continue unless the provider withdraws the appeal. The withdrawal must be in writing.*

of ODMR/DD-administered home and community-based services may provide supported living services without a supported living certificate. That, however, may not be the intent.

DEPARTMENT OF NATURAL RESOURCES

- With respect to the amount of the fee that must accompany an application for an oil or gas well permit under continuing law, does all of the following: (1) retains a fee of \$250, but applies it only to permits to conduct activities in a township with a population of fewer than 5,000 and to the revision or reissuance of an existing permit, (2) increases the fee to \$500 for permits to conduct activities in townships with a population of 5,000 to 9,999, (3) increases the fee to \$750 for permits to conduct activities in townships with a population of 10,000 to 14,999, and (4) increases the fee to \$1,000 for permits to conduct activities in townships with a population of 15,000 or more or in municipal corporations regardless of population; and exempts an application for a permit to plug back an existing well from the permit fee.
- Eliminates authorization for the Chief of the Division of Natural Areas and Preserves to enter into an agreement with the United States Department of Commerce for the purpose of receiving grants pertaining to Old Woman Creek National Estuarine Research Reserve because oversight of the Reserve has been transferred to the Division of Wildlife.
- Requires the Chief of the Division of Water to adopt rules designating certain classes of dams that are to be inspected periodically by registered professional engineers hired by the dam owners rather than being inspected by the Chief, and requires the rules to establish standards and procedures governing such private inspections.
- Changes one of the funding sources that the Division of Wildlife uses to pay school districts in which land owned by the state and administered by the Division is located from federal wildlife restoration funds to fines, penalties, and forfeitures credited to the Wildlife Fund.
- Specifies that persons under the age of 18 qualify for a youth hunting license, youth deer or wild turkey permit, and youth fur taker permit rather than persons under the age of 16 as in former law, and allows nonresident youths to obtain a youth fur taker permit.



- Eliminates the requirement that a person carry a fur taker permit affixed to a hunting license, and instead requires only that the person carry the fur taker permit.
- Eliminates the requirement that a person's signature be written across the face of a fur taker permit, and instead requires only that the signature be written on the permit.
- Specifies that a person on active duty in the Armed Forces of the United States who is stationed in this state is eligible to obtain a resident hunting or fishing license regardless of whether the person qualifies as a resident of this state.
- Prohibits the Division of Parks and Recreation from adopting rules establishing a fee for parking a motor vehicle in a state park or for admission to a state park.
- Requires the Division of Parks and Recreation to adopt rules establishing a discount program for park services and rentals, but not for the purchase of merchandise, for all persons who are issued a Golden Buckeye Card.
- Eliminates the Parks and Recreation Depreciation Reserve Fund, which was used to maintain revenue-producing facilities of the Division of Parks and Recreation.
- Establishes the Watercraft Revolving Loan Fund consisting of money appropriated to it, money from the repayment of loans, and money from other specified sources, and authorizes the Director of Natural Resources to use money in the Fund to make loans for marine recreational facilities and projects related to the use of light draft vessels, including refuge harbors.
- Establishes procedures and requirements governing the revolving loan program that the Fund supports.
- Requires every nonresident owner or operator of a snowmobile, off-highway motorcycle, or all-purpose vehicle to obtain a \$5 temporary operating permit, and eliminates registration reciprocity.
- Requires the Tax Commissioner, rather than the Treasurer of State as in former law, to credit 14.2% of the money collected from the severance

tax on coal to the Coal Mining Administration and Reclamation Reserve Fund rather than the Reclamation Forfeiture Fund when the balance in the former Fund drops below \$2 million during a fiscal year.

Fees for oil and gas well permits

(R.C. 1509.06, 1509.072, and 1509.31)

Continuing law requires each application for an oil or gas well permit to be accompanied by a nonrefundable fee. Under law revised by the act, the amount of the fee is \$250. The act retains that fee amount of \$250, but applies it only to permits to conduct activities in a township with a population of fewer than 5,000. The act then increases the nonrefundable fee for other oil or gas well permits as follows:

(1) \$500 for a permit to conduct activities in a township with a population of 5,000 or more, but fewer than 10,000;

(2) \$750 for a permit to conduct activities in a township with a population of 10,000 or more, but fewer than 15,000; and

(3) \$1,000 for a permit to conduct activities in a township with a population of 15,000 or more or in a municipal corporation regardless of population.

The act requires the use of the most recent federal decennial census when determining populations for purposes of calculating fee amounts. In addition, the act requires each application for the revision or reissuance of a permit to be accompanied by a nonrefundable fee of \$250.

Finally, the act exempts an application for a permit to plug back an existing well from the fee requirements.

Old Woman Creek National Estuarine Research Reserve

(R.C. 1517.02 and 1533.28 (not in the act))

Former law authorized the Chief of the Division of Natural Areas and Preserves, with the approval of the Director of Natural Resources, to enter into an agreement with the United States Department of Commerce for the purpose of receiving grants to continue the management, operation, research, and programming at Old Woman Creek National Estuarine Research Reserve. However, the Department of Natural Resources transferred the oversight of the



Reserve to the Division of Wildlife and transferred to that Division the authority to enter into the grant agreement with the United States Department of Commerce regarding the Reserve. The Division of Wildlife has continuing legal authority to enter into such agreements with federal agencies. The act, therefore, eliminates the provision creating the authority for the Chief of the Division of Natural Areas and Preserves to enter into such a grant agreement.

Privatization of inspection of certain dams

(R.C. 1521.062)

Law retained in part by the act requires, with certain exceptions, all dams, dikes, and levees that are constructed in Ohio to be inspected periodically by the Chief of the Division of Water to ensure that continued operation and use of a dam, dike, or levee does not constitute a hazard to life, health, or property. The act specifies that the Chief is not required to inspect dams that, in accordance with rules adopted under the act, are required to be inspected by registered professional engineers who have been approved for that purpose by the Chief.

The act specifies that the Chief, in accordance with the Administrative Procedure Act, must adopt and may amend or rescind rules that do all of the following: (1) designate classes of dams for which dam owners must obtain the services of a registered professional engineer to periodically inspect the dams and to prepare reports of the inspections for submittal to the Chief, (2) establish standards in accordance with which the Chief must approve or disapprove registered professional engineers to inspect dams together with procedures governing the approval process, (3) establish schedules, standards, and procedures governing periodic inspections and standards and procedures governing the preparation and submittal of inspection reports, and (4) establish provisions regarding enforcement of the act's provisions concerning dam inspections and rules adopted under them.

The act specifies that, in accordance with the rules, the owner of a dam that is in a class of dams that is designated in the rules for inspection by registered professional engineers must obtain the services of a registered professional engineer who has been approved by the Chief to conduct the periodic inspection of dams pursuant to schedules and other standards and procedures established in the rules. The act retains a provision specifying that intervals between periodic inspections must be determined by the Chief, but cannot exceed five years. Under the act, a dam that is designated under the rules for inspection by a registered professional engineer, but that is not inspected within a five-year period may be inspected by the Chief at the owner's expense.

Under continuing law, an inspection report must be prepared following the inspection of a dam, dike, or levee. Continuing law requires the Chief to furnish the owner a report of the inspection and to inform the owner of any required repairs, maintenance, investigations, and other remedial and operational measures. The act eliminates a provision authorizing the Chief to use inspection reports prepared for the owner of the dam, dike, or levee by a registered professional engineer.

The act requires a registered professional engineer who inspects a dam that is in the class of dams that is designated in the rules for inspection by registered professional engineers to prepare a report of the inspection in accordance with the rules and to provide the inspection report to the dam owner who must submit it to the Chief. In the case of a dam, dike, or levee that the Chief inspects, the act retains the requirement that the Chief furnish a report of the inspection to the owner of the dam, dike, or levee. It also retains the requirement that the Chief inform the owner of any required repairs, maintenance, investigations, and other remedial and operational measures, but applies the requirement to any dam, dike, or levee that has been inspected, either by the Chief or by a registered professional engineer, and that is the subject of an inspection report prepared or received by the Chief.

Division of Wildlife's sources of funding for payments to school districts

(R.C. 1531.27)

Continuing law requires the Chief of the Division of Wildlife to pay to the treasurers of counties in which lands owned by the state and administered by the Division are located an annual amount equal to 1% of the total value of the lands exclusive of improvements. The money must be used for school purposes in the local school districts.

The act changes one of the two funding sources that the Division uses to pay school districts. It removes federal wildlife restoration funds as a funding source and replaces them with fines, penalties, and forfeitures credited to the continuing Wildlife Fund. It retains funds from the sale of hunting or fishing licenses as a funding source. Under continuing law, the Director of Natural Resources determines the allocation of amounts to be paid from each funding source.

Youth hunting licenses and permits; fur taker permits

(R.C. 1533.10, 1533.11, and 1533.111)

Law largely retained by the act specifies that persons under the age of 16 qualify for a youth hunting license, youth deer or wild turkey permit, and youth fur taker permit. The act raises the age qualification for the youth license and permits to persons under the age of 18.

Additionally, law retained in part by the act requires each applicant for a fur taker permit who is an Ohio resident and under the age of 16 years to procure a special youth fur taker permit. In addition to changing the age qualification (see above), the act eliminates the requirement that an applicant for a youth permit be an Ohio resident.

Finally, law revised by the act requires every person, while hunting or trapping fur-bearing animals on lands of another, to carry the person's fur taker permit affixed to his hunting license with his signature written across the face of the permit. The act makes two changes in this provision. First, it eliminates the requirement that the person's fur taker permit be affixed to the hunting license and instead requires only that the person carry the fur taker permit. Second, it eliminates the requirement that a person's signature be written across the face of a fur taker permit and instead requires only that the signature be written on the permit.

Resident hunting and fishing licenses for certain military personnel

(R.C. 1533.10, 1533.11, 1533.111, 1533.112, 1533.12, and 1533.32)

Continuing law authorizes every person on active duty in the Armed Forces of the United States, while on leave or furlough, to take or catch fish of the kind lawfully permitted to be taken or caught within the state, to hunt any wild bird or wild quadruped lawfully permitted to be hunted within the state, and to trap fur-bearing animals lawfully permitted to be trapped within the state without procuring a fishing license, a hunting license, a fur taker permit, or a wetlands habitat stamp required by the laws governing hunting, fishing, and trapping, provided that the person must carry on the person when fishing, hunting, or trapping a card or other evidence identifying the person as being on active duty in the Armed Forces of the United States, and provided that the person is not otherwise violating any of the hunting, fishing, and trapping laws of this state. In order to hunt deer or wild turkey, such a person must obtain a special deer or wild turkey permit, as applicable, but the person need not obtain a hunting license in order to obtain such a permit.

Except for the persons described above who are on active duty in the Armed Forces of the United States and who, because they are on leave or furlough, may hunt, fish, or trap without procuring a fishing license, a hunting license, a fur taker permit, or a wetlands habitat stamp, the act requires every person on active duty in the Armed Forces of the United States who is stationed in this state and who wishes to engage in an activity for which a license, permit, or stamp is required under the laws governing hunting, fishing, and trapping to obtain the requisite license, permit, or stamp. The act specifies that such a person who is stationed in this state is eligible to obtain a resident hunting or fishing license regardless of whether the person qualifies as a resident of this state. To obtain a resident hunting or fishing license, the person must present a card or other evidence identifying the person as being on active duty in the Armed Forces of the United States and as being stationed in this state.

State park fees

Prohibition against rules establishing state park admission and parking fees

(R.C. 1541.03)

Continuing law specifies that all lands and waters dedicated and set apart for state park purposes are under the control and management of the Division of Parks and Recreation to protect, maintain, and keep in repair. The Division has authority to adopt rules necessary for the proper management of state parks, including the establishment of fees and charges for use of facilities in state parks. Formerly, the rules also could establish charges for admission to state parks. While the act generally retains the Division's authority over the state parks and the authority to adopt rules for that purpose, it eliminates the Division's authority to adopt rules establishing charges for admission to state parks. It then specifically prohibits the Division from adopting rules establishing fees or charges for parking a motor vehicle in a state park or for admission to a state park.

Discount program for Golden Buckeye Card holders

(R.C. 1541.03)

The act requires the Division to adopt rules establishing a discount program for all persons who are issued a Golden Buckeye Card. The discount program must provide a discount for all park services and rentals, but cannot provide a discount for the purchase of merchandise.

Law generally unchanged by the act requires that every Ohio resident who is 65 years of age or older or who is permanently and totally disabled and who



furnishes evidence of that age or disability in a manner prescribed by Division rule must be charged one-half of the regular fee for camping, except on weekends and holidays designated by the Division. Such a person cannot be charged more than 90% of the regular charges for state recreational facilities, equipment, services, and food service operations utilized by the person at any time of year, whether maintained or operated by the state or leased for operation by another entity. The act retains the discounts for camping and state recreational facilities, equipment, services, and food service operations, but qualifies that those discounts apply unless otherwise provided by Division rule.

Elimination of Parks and Recreation Depreciation Reserve Fund

(R.C. 1541.221)

Former law specified that notwithstanding the statute governing the State Park Fund, 10% of the receipts from revenue-producing facilities of the Division of Parks and Recreation in the Department of Natural Resources had to be transferred quarterly from the State Park Fund to the Parks and Recreation Depreciation Reserve Fund. The purpose of the latter Fund was to maintain the revenue-producing facilities in the best economic operating condition. The act eliminates the Parks and Recreation Depreciation Reserve Fund, thus retaining all of the receipts from the revenue-producing facilities in the State Park Fund.

Watercraft Revolving Loan Fund and related program

(R.C. 1547.721, 1547.722, 1547.723, 1547.724, 1547.725, and 1547.726)

The act creates the Watercraft Revolving Loan Fund in the state treasury. The Fund consists of money appropriated or transferred to it, money received and credited to the Fund under the revolving loan program established by the act, and any grants, gifts, or contributions of moneys received for deposit to the credit of the Fund.

The act requires the Director of Natural Resources to use money in the Fund for the purpose of a revolving loan program under which he makes loans in accordance with the act for eligible projects and takes actions under the act necessary to fulfill that purpose. Under the act, the Director may delegate any of his duties or responsibilities involving the program to the Chief of the Division of Watercraft.

For purposes of the revolving loan program, the act defines "eligible project" as a project that involves the acquisition, construction, establishment, reconstruction, rehabilitation, renovation, enlargement, improvement, equipping, furnishing, or development of either of the following: (1) marine recreational

facilities, or (2) refuge harbors and other projects for the harboring, mooring, docking, launching, and storing of light draft vessels. The act requires the Director to adopt rules in accordance with the Administrative Procedure Act that are necessary to implement the program, including rules that define "marine recreational facilities," "refuge harbors," and "light draft vessels."

The act authorizes the Director to establish separate accounts in the Watercraft Revolving Loan Fund for particular projects or otherwise. Income from the investment of money in the Fund must be credited to the Fund, and, if the Director so requires, to particular accounts in the Fund.

The act specifies that with the approval of the Controlling Board, and subject to the other applicable provisions of the act, the Director may lend moneys in the Fund to public or private entities for the purpose of paying the allowable costs of an eligible project. The act requires the Director's rules to define what constitutes the "allowable costs" of an eligible project.

Loans may be made under the program only if the Director determines that all of the following apply: (1) the project is an eligible project and is economically sound, (2) the borrower is unable to finance the necessary allowable costs through ordinary financial channels upon comparable terms, (3) the repayment of the loan will be adequately secured by a mortgage, lien, assignment, or pledge at a level of priority as the Director may require, and (4) the amount of the loan does not exceed 90% of the total cost of the project.

The act specifies that these determinations of the Director are conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement that he signs. Further, the Director's determinations that a project constitutes an eligible project and that the costs of such a project are allowable costs together with all other determinations relevant to the project or to an action taken or agreement entered into pursuant to the revolving loan program are conclusive for purposes of the validity and enforceability of rights of parties arising from actions taken and agreements entered into under the program.

The Director may take any actions necessary or appropriate with respect to a loan made under the revolving loan program, including facilitating the collection of amounts due on a loan. The act also specifically authorizes the Director to do any of the following with respect to the program: (1) establish fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of and security for loans made from the Watercraft Revolving Loan Fund that the Director determines to be appropriate and in furtherance of the purpose for which the loans are made, (2) retain the services of or employ financial consultants, appraisers, consulting engineers, superintendents, managers, construction and accounting experts, attorneys, and employees, agents, and

independent contractors that the Director determines to be necessary and fix the compensation for their services, (3) receive and accept from any person grants, gifts, contributions of money, property, labor, and other things of value to be held, used, and applied only for the purpose for which the grants, gifts, and contributions are made, and (4) enter into appropriate agreements with other governmental entities to provide for payment of allowable costs related to the development of eligible projects for which loans have been made from the Fund, the operation of facilities associated with eligible projects, and any governmental action that a governmental entity is authorized to take, including undertaking on behalf and at the request of the Director any action that he is authorized to undertake pursuant to the revolving loan program.

Under the act, all state agencies must cooperate with and provide assistance to the Director as is necessary for the administration of the revolving loan program. The act defines "state agency," by reference to continuing law, as every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.

Finally, the act requires all money received by the state from the repayment of loans made from the Fund, including interest, fees, and charges associated with such loans, to be deposited to the credit of the Watercraft Revolving Loan Fund.

Nonresident operation of all-purpose and other special vehicles

(R.C. 4519.02 and 4519.09)

Former law established registration reciprocity for a nonresident to operate a snowmobile, off-highway motorcycle, or all-purpose vehicle in this state if the person lived in a state that had a registration requirement for those vehicles that was similar to Ohio's registration law. If the nonresident owner or operator of the special vehicle lived in a state that did not have a registration requirement similar to Ohio's, the person was required to obtain a \$5 temporary operating permit that was valid for up to 15 days in order to operate the vehicle in Ohio.

The act eliminates registration reciprocity and requires every nonresident owner or operator of a snowmobile, off-highway motorcycle, or all-purpose vehicle to obtain a \$5, 15-day temporary operating permit to operate the vehicle in Ohio.

Distribution of money from severance tax on coal

(R.C. 5479.02)

Under continuing law, specified percentages of the money received from the severance tax on coal must be credited to the following funds: Geological



Mapping Fund, Reclamation Forfeiture Fund, Coal Mining Administration and Reclamation Reserve Fund, and Unreclaimed Lands Fund. When the Chief of the Division of Mineral Resources Management finds at any time during a fiscal year that the balance of the Coal Mining Administration and Reclamation Reserve Fund is below \$2 million, the Chief must certify that fact to the Director of Budget and Management. Upon receipt of the Chief's certification, the Director is required, under law retained in part by the act, to direct the Treasurer of State to credit, during the remainder of the fiscal year for which the certification is made, the 14.2% of the money collected from the severance tax on coal that is usually credited to the Reclamation Forfeiture Fund instead to the Coal Mining Administration and Reclamation Reserve Fund. The act requires the Tax Commissioner, rather than the Treasurer of State, to credit the 14.2% of the money collected on the severance tax on coal to the Coal Mining Administration and Reclamation Reserve Fund when directed by the Director of Budget and Management.

OHIO BOARD OF NURSING

- Requires the Board of Nursing to establish and conduct a pilot program for the use of medication aides in 80 nursing homes and 40 residential care facilities.
- Creates the Medication Aide Advisory Council.
- Continues the use of medication aides after the pilot program ends by permitting any nursing home or residential care facility to use medication aides.

Medication Aide Pilot Program

(R.C. 3721.011, 4723.32, 4723.34, 4723.61 to 4723.69, and 4723.91)

The act requires the Board of Nursing, in consultation with the Medication Aide Advisory Council, to conduct a pilot program for the use of medication aides in nursing homes and residential care facilities.²²⁰ The program must be

²²⁰ For purposes of this section, "medication" means a drug, as defined in the Revised Code (R.C. 4729.01); "prescription medication" means a drug that may be dispensed only on a prescription. "Nurse" means (1) a registered nurse or (2) a licensed practical nurse who has completed a course in medication administration.

commenced not later than May 1, 2006 and be conducted until July 1, 2007. During this period, a nursing home or residential care facility participating in the Program may use one or more medication aides to administer prescription medications to its residents. To be used as a medication aide, an individual must be certified by the Board, and the nursing home or residential care facility using the medication aide must ensure that all of the act's requirements for use of medication aides are met.

Medication Aide Advisory Council

The act creates the Medication Aide Advisory Council, which is to make recommendations to the Board of Nursing in establishing and creating the pilot program. The Council is comprised of the following members:

- (1) A registered nurse working in long-term care who is appointed by the governing body of the Ohio Nurses Association;
- (2) A licensed practical nurse working in long-term care who is appointed by the governing body of the Licensed Practical Nurse Association of Ohio;
- (3) A registered nurse who has experience in researching gerontology issues, appointed by the governing body of the Ohio Nurses Association;
- (4) An advanced practice nurse who has experience in gerontology, appointed by the governing body of the Ohio Association of Advanced Practice Nurses;
- (5) A representative of the Ohio Health Care Association who is appointed by the governing body of the Association;

Nursing homes and residential care facilities are licensed by the Ohio Department of Health. A residential facility is a facility that provides accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment; or a facility that provides accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care (R.C. 3721.01).

A nursing home is a facility that provides care to persons who by reason of illness or physical or mental impairment required skilled nursing care or personal care services (R.C. 3721.01).



(6) A representative of the Association of Ohio Philanthropic Homes, Housing, and Services for the Aging who is appointed by the governing body of the Association;

(7) A representative of the Ohio Academy of Nursing Homes who is appointed by the governing body of the Academy;

(8) A representative of the Ohio Assisted Living Association who is appointed by the governing body of the Association;

(9) A representative of the Ohio Association of Long Term Care Ombudsmen who is appointed by the governing body of the Association;

(10) A representative of the American Association of Retired Persons who is appointed by the governing body of the Association;

(11) A representative of facility residents and families of facility residents who is appointed by the Board of Nursing;

(12) A representative of the Senior Care Pharmacy Alliance who is appointed by the governing body of the Alliance;

(13) A representative of nurse aides who is appointed by the Director of Health;

(14) A representative of the Department of Health with expertise in the Department's Competency Evaluation Program who is appointed by the Director;

(15) A representative of the Office of State Long-term Care Ombudsperson Program who is appointed by the Ombudsperson;

(16) A representative of the Department of Job and Family Services who is appointed by the Director.

Members of the council serve at the pleasure of their appointing authorities. Vacancies on the Council must be filled in the same manner as original appointments. A member or representative of the Board of Nursing must serve as the Council chairperson. Council members receive no compensation for their service, except to the extent that serving on the Council is part of their regular duties related to employment.

Council duties

The Medication Aide Advisory Council is to make recommendations to the Board of Nursing in establishing and conducting the pilot program. The Council



must make recommendations to the Board regarding the design and operation of the program, including a method of collecting data through reports submitted by participating nursing homes and residential care facilities, and protection of the health and welfare of the residents of facilities participating in the program and using medication aides after the program terminates. The Council must also make recommendations on the content of the course of instruction required to obtain certification as a medication aide, including the examination to be used to evaluate the ability to administer prescription medication safely and the score that must be attained to pass the examination and whether a medication aide may administer a prescription drug through a gastrostomy or jejunostomy tube and if so, the amount and type of training the medication aide needs to be adequately prepared to do so.²²¹ The Council is also required to make recommendations to the Board of Nursing regarding the Board's adoption of administrative rules and any other issue it considers relevant to the use of medication aides in nursing homes and residential care facilities.

Program operation

Not later than February 1, 2006, the Board of Nursing, in consultation with the Medication Aide Advisory Council, is to design the program and establish standards to govern medication aides, nursing homes, and residential care facilities participating in the Program. The standards must include training requirements for medication aides and for staff members of participating facilities. The Board must also implement a process for selecting facilities to participate in the Program. The Board must establish standards to protect the health and safety of the residents of the nursing homes and residential care facilities participating in the program.

The act specifies that the Board of Nursing must operate the pilot program in a manner "consistent with human protection and other ethical concerns typically associated with research studies involving live subjects."

Evaluation and report

With the assistance of the Medication Aide Advisory Council, the Board of Nursing must evaluate the pilot program. In conducting the evaluation, the Board must do all of the following:

- Assess whether medication aides are able to safely administer prescription medications to nursing home and residential care facility residents;

²²¹ *Gastrostomy is the surgical insertion of a feeding tube into the stomach. Jejunostomy is the surgical insertion of a feeding tube into the jejunum, part of the small intestine.*

- Determine the financial implications of nursing homes and residential care facilities utilizing medication aides;
- Consider any other issue the Board or Council considers relevant to the evaluation;
- Prepare and submit a report of its findings to the Board and the Council.

The act requires the Board of Nursing to prepare a report derived from the evaluation of the pilot program. The report must be submitted not later than March 1, 2007 to the Governor, the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Director of Health.

Use of medication aides after pilot program terminates

Beginning July 1, 2007, the act permits any nursing home or residential care facility to use one or more medication aides certified by the Board of Nursing. To use medication aides, the nursing home or residential care facility must ensure all of the act's requirements for use of medication aides are met.

Medication aides

The act requires an individual seeking certification as a medication aide to apply to the Board of Nursing on a form it prescribes. If the application is submitted on or after July 1, 2007, it must be accompanied by the certification fee established in rules. The Board must issue a medication aide certificate to an applicant if the applicant satisfies all of the following requirements:

- Is at least 18 years of age;
- Has a high school diploma or a high school equivalence diploma;
- If the applicant is to practice as a medication aide in a nursing home, is a certified nurse aide;
- If the applicant is to practice as a medication aide in a residential care facility, is a certified nurse aide or has at least one year of direct care experience in a residential care facility;
- Successfully completes the course of instruction provided by a training program approved by the Board;

- Undergoes a criminal records check by the Bureau of Criminal Identification and Investigation.²²²
- Successfully completes all other requirements established in rules.

If a medication aide certificate is issued on the basis of having at least one year of direct care experience working in a residential care facility, the Board must state on the certificate that it is valid for use only in a residential care facility. A medication aide certificate is valid for two years unless earlier suspended or revoked. The certificate may be renewed in accordance with procedures specified by the Board in rules. To be eligible for renewal, an applicant must pay the renewal fee established in rules and meet all renewal qualifications specified in rules.

A certified medication aide may administer prescription medications to the residents of nursing homes and residential care facilities that use medication aides in accordance with the law governing the use of medication aides. Responsibility for the administration must be delegated to the medication aide by a nurse.²²³ The act requires that delegation of medication administration be carried out in accordance with the rules for nursing delegation adopted by the Board. A nurse who has delegated to a medication aide responsibility for the administration of prescription medications to the residents of a nursing home or residential care facility is not permitted to withdraw the delegation on an arbitrary basis or for any purpose other than patient safety.

Medication aides may administer only oral, topical, vaginal, or rectal medications, medications administered as drops to the eye, ear, or nose, or medications prescribed with a designation authorizing or requiring administration on an as-needed basis (but only if a nursing assessment of the patient is completed before the medication is administered). They cannot administer any medication that requires dosage calculations, or any medication that is a Schedule II controlled substance.²²⁴ A medication aide is prohibited from administering

²²² *The results of a criminal records check requested under this provision (and any report containing those results) is not a public record and must not be made available to any person except for use in determining whether the individual who is the subject of the check should be issued a certificate. The results may also be made available to the individual who is the subject of the records check or that individual's representative.*

²²³ *Delegation must be in accordance with rules governing nursing delegation adopted under the nursing law (Revised Code Chapter 4723.).*

²²⁴ *Controlled substances are drugs, such as narcotics, that are subject to special restrictions because of the potential for abuse (R.C. 3719.01).*

prescription medications by injection, intravenous therapy procedures, or splitting pills for the purpose of changing the dose being given. A nursing home or residential care facility using medication aides must ensure that the medication aides do not have access to any schedule II controlled substances within the home or facility for use by its residents.

Disciplinary action

The Board may, by vote of a quorum, deny, revoke, suspend, or place restrictions on a medication aide certificate; reprimand or otherwise discipline the holder of a medication aide certificate; impose a fine of not more than \$500 per violation; or issue an order to summarily suspend or automatically suspend a medication aide certificate.²²⁵ Any disciplinary action by the Board against a medication aide must be taken pursuant to an adjudication conducted under the Administrative Procedure Act (R.C. Chapter 119.), except that in lieu of a hearing, the Board may enter into a consent agreement with an individual to resolve an allegation of a violation. A consent agreement when ratified by vote of a quorum of the Board constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent agreement, the admissions and findings contained in the agreement are of no effect.

Reporting alleged misconduct

The act requires every employer of medication aides to report to the Board the name of any current or former employee who holds a medication aide certificate who has engaged in conduct that constitutes grounds for disciplinary action by the Board. The act requires medication aide associations to report to the Board the name of any medication aide who has been investigated and found to constitute a danger to the public health, safety, and welfare because of conduct that constitutes grounds for disciplinary action by the Board. An association is not, however, required to report the individual's name if the individual is maintaining satisfactory participation in a peer support program approved by the Board.

The act also requires that, if the prosecutor in a case involving a charge of a misdemeanor committed in the course of employment, a felony charge, or a charge of gross immorality or moral turpitude, including a case dismissed on technical or

²²⁵ *The act specifies that sanctions may be imposed for any reasons for which sanctions may be imposed by the Board on registered nurses, licensed practical nurses, and dialysis technicians, to the extent that those reasons are applicable to medication aides as specified in rules.*

procedural grounds, knows or has reason to believe that the person charged holds a medication aide certificate, the prosecutor must notify the Board.

Medication aide training programs

A person or government entity seeking approval to provide a medication aide training program must apply to the Board of Nursing on a form prescribed by the Board. If the application is submitted on or after July 1, 2007, it must be accompanied by the fee established by the Board. The act requires the Board to approve the applicant to provide the medication aide training program if the content of the course of instruction to be provided meets the standards specified by the Board in rules, including:

- At least 70 hours of instruction, including both classroom instruction on medication administration and at least 20 hours of supervised clinical practice in medication administration;
- A mechanism for evaluating whether an individual's reading, writing, and mathematical skills are sufficient for the individual to be able to administer prescription medications safely;
- An examination that tests the ability to administer prescription medications safely and that meets the requirements established by the Board by rule.

The Board may deny, suspend, or revoke the approval granted to the provider of a medication aide training program for reasons specified in rules it adopts. Any such action must be in accordance with the Administrative Procedure Act.

Participating facilities

Notwithstanding provisions in current law that prohibit the employment of an individual other than a licensed nurse to perform nursing tasks (including administering medication), a nursing home or residential care facility that participates in the Medication Aide Pilot Program may, during the period the pilot program is operated, utilize one or more medication aides to administer medications, including prescription medications, to participating residents.

To participate in the pilot program, a nursing home or residential care facility must volunteer by applying to the Board of Nursing on a form provided by the Board. To be eligible to participate, the facility must agree to observe the standards established by the Board for the use of medication aides and meet the following requirements:

- If the facility is a nursing home, it must have been found in the two most recent surveys or inspections of the home that the home is free from deficiencies with regard to the administration of medication.
- If the facility is a residential care facility, it must be free of deficiencies related to the provision of skilled nursing care or the administration of medication.

The Board must select from the eligible facilities 80 nursing homes and 40 residential care facilities to participate in the pilot program. As a condition of participation in the program, the nursing home or residential care facility must pay a participation fee established in rules adopted by the Board. The fee is not reimbursable under Medicaid.

The Board may terminate a participating facility's participation in the pilot program on receipt of evidence the Board finds credible that the facility's continued participation in the pilot program poses an imminent danger, risk of serious harm, or jeopardy to a participating resident.

Immunity from liability and disciplinary actions

The act provides that a registered nurse, or licensed practical nurse acting at the direction of a registered nurse, who delegates medication administration to a certified medication aide is not liable in damages to any person or government entity in a civil action for injury, death, or loss to person or property that allegedly arises from an action or omission of the medication aide in performing the medication administration, if the delegating nurse delegates the medication administration in accordance with the act and the rules to be adopted for use of medication aides.

The act provides immunity from disciplinary action by the Board of Nursing or any other government entity regulating that person's professional practice, as well as immunity from civil liability, to a person employed by a nursing home or residential care facility that uses certified medication aides who reports a medication error in good faith. The immunity is limited to reporting of the error rather than the error itself. Under the act, a "medication error" means a failure to follow the prescriber's instructions when administering a prescription medication to a participating resident.

Rules

The act requires the Board of Nursing, in consultation with the Medication Aide Advisory Council, to adopt rules governing the use of medication aides.

Initial rules must be adopted not later than February 1, 2006. The rules must establish or specify all of the following:

- Fees, in an amount sufficient to cover the costs incurred by the Board, for participation in the pilot program, certification as a medication aide, and approval of a medication aide training program;
- Requirements to obtain a medication aide certificate;
- Procedures for renewal of medication aide certificates;
- Standards for medication aide training programs, including the examination to be administered by the training program to test an individual's ability to administer prescription medications safely and for peer support programs;
- Reasons for denying, revoking, or suspending a medication aide certificate or approval of a medication aide training program;
- The extent to which the Board determines that the reasons for taking disciplinary action against a registered nurse, licensed practical nurse, or dialysis technician are applicable reasons for taking disciplinary actions against an applicant for or holder of a medication aide certificate.
- Other standards and procedures the Board considers necessary to implement the law governing the use of medication aides in nursing homes and residential care facilities.

OHIO OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD

- Replaces one occupational therapist member of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board with a licensed occupational therapy assistant at the time of the next Board appointment.
- Allows a person to practice physical therapy without a prescription or referral from a physician or nurse if the person completed two years of practical experience as a licensed physical therapist prior to December 31, 2004.

Occupational Therapy, Physical Therapy, and Athletic Trainers Board membership

(R.C. 4755.03; Section 503.18)

Continuing Ohio law requires the Occupational Therapy, Physical Therapy, and Athletic Trainers Board to consist of 16 members. Under prior law, the Board included five occupational therapists.²²⁶ The act replaces one of the occupational therapist members with a licensed occupational therapy assistant at the time of the next Board appointment.

Practice of physical therapy without prescription or referral

(R.C. 4755.48)

A person who has completed two years of practical experience as a licensed physical therapist prior to December 31, 2003 may practice physical therapy without a prescription or referral from a physician or nurse. The act extends this authority to persons who completed the experience prior to December 31, 2004.

OHIO PUBLIC DEFENDER COMMISSION

- Requires the court to assess a non-refundable \$25 application fee to a defendant in a criminal case or a party in a juvenile court case who requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court and allows the court to waive or reduce the fee upon a finding that the person lacks the financial resources that are sufficient to pay the fee.
- Prohibits a court, state public defender, county or joint county public defender, or any other court-appointed counsel from denying a person the assistance of counsel solely due to the person's failure to pay the application fee.
- Requires the clerk of the court that assessed the fee to forward all such application fees to the county treasurer, requires the county to retain 80% of the application fees to offset the costs of providing legal representation

²²⁶ *The Occupational Therapy, Physical Therapy, and Athletic Trainers Board also includes five physical therapists, four athletic trainers, one physician, and one person representing the public.*

to indigent persons, and requires the county auditor to remit 20% of the application fees to the State Public Defender for deposit into the state treasury to the credit of the Client Payment Fund.

- Provides that if a case is bound over to the court of common pleas and the person failed to pay the application fee in the municipal court or county court, or if a case involving an alleged delinquent child is transferred to the court of common pleas, the court of common pleas must assess the application fee.
- Changes how much a county is required to pay the State Public Defender for legal representation of an indigent defendant from 50% of the actual cost of representation to (1) for the amount identified as legal fees, 100% less the state reimbursement rate, as calculated by the State Public Defender for the month the case terminated, and (2) 100% of the amount identified as expenses.
- Requires a county to pay the State Public Defender 100% of the cost of investigation or mitigation services provided by the State Public Defender to private appointed counsel or to a county or joint county public defender.
- Allows funds in the state treasury's County Representation Fund to also be used to pay for investigation or mitigation services provided by the State Public Defender.

Background information

(R.C. 120.05, 120.06, 120.13, 120.15, 120.23, 120.25, and 120.33)

Ohio has a State Public Defender, as well as county and joint county public defenders, who provide legal representation to indigent adults and juveniles who are charged with the commission of an offense. In lieu of using a county public defender or joint county public defender to represent indigent persons, the board of county commissioners of any county may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court. The State Public Defender, county public defenders, and joint county public defenders are required to determine whether or not the person is indigent, subject to review by the court. The applicable public defender must investigate the financial status of each person to be represented, at the earliest time the circumstances permit, and may require the person represented to disclose the

records of public or private income sources and property, otherwise confidential, which may be of aid in determining indigency.

Under prior law, when the State Public Defender is designated by the court or requested by a county public defender or joint county public defender to provide legal representation for an indigent person in any case other than certain cases the State Public Defender defends because of a contract with a county public defender commission or a joint county public defender commission, the State Public Defender was required to send to the county in which the case is filed an itemized bill for 50% of the actual cost of the representation. The county, upon receipt of the itemized bill, was required to pay the 50%. Money received from the counties is to be deposited in the state treasury's County Representation Fund for the use of the State Public Defender's legal representation of indigent defendants when designated by the court or requested by a county or joint county public defender.

Operation of the act

Application fee for indigent defendants and parties in juvenile court

(R.C. 120.36)

Under continuing law, if a person represented by a state public defender, county public defender, or joint county public defender has, or may reasonably be expected to have, the means to meet some part of the cost of the services rendered to the person, the person must reimburse the State Public Defender, county public defender, or joint county public defender in an amount that the person can reasonably be expected to pay. If it is determined by the State Public Defender, county public defender, joint county public defender, or the court that the legal representation was provided to a person not entitled to representation, the person may be required to reimburse the State Public Defender, county public defender, or joint county public defender for the costs of the representation provided.

The act provides that if a person who is a defendant in a criminal case or a party in a case in juvenile court requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is filed or the juvenile court, whichever is applicable, must assess, unless the application fee is waived or reduced, a non-refundable application fee of \$25. The court must direct the person to pay the application fee to the clerk of court. The person must pay the application fee at the same time the person files an affidavit of indigency or a financial disclosure form with the court or within seven days of that date. If the person does not pay the application fee within that seven-day period, the court must assess the application fee at sentencing or at the final disposition of the case. The court must

assess an application fee one time per case. An appeal must not be considered a separate case for the purpose of assessing the application fee. The court may waive or reduce the fee upon a finding that the person lacks financial resources that are sufficient to pay the fee or the payment of that fee would result in an undue hardship.

The act prohibits a court, state public defender, county or joint county public defender, or other counsel appointed by the court from denying a person the assistance of counsel solely due to the person's failure to pay the application fee. A person's present inability, failure, or refusal to pay the application fee does not disqualify that person from legal representation.

The act provides that the application fee is separate from and in addition to any other amount assessed against a person who is found to be able to contribute toward the cost of the person's legal representation.

The act requires the clerk of the court that assessed the fees to forward all application fees collected pursuant to the above-described provisions to the county treasurer for deposit in the county treasury. The county must retain 80% of the application fees to offset the costs of providing legal representation to indigent persons. Each month, the county auditor must remit 20% of the application fees to the State Public Defender, who must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund. The State Public Defender may use that money in accordance with the law creating the Fund.

The act requires each clerk of court, on or before the first day of March of each year beginning in the year 2007, to provide the State Public Defender and the State Auditor a report including all of the following:

- (1) The number of persons in the previous calendar year who requested or were provided a state public defender, county or joint county public defender, or other counsel appointed by the court;
- (2) The number of persons in the previous calendar year for whom the court waived the application fee;
- (3) The dollar value of the assessed application fees in the previous calendar year;
- (4) The amount of assessed application fees collected in the previous calendar year;
- (5) The balance of unpaid assessed application fees at the open and close of the previous calendar year.

The act provides that if a case is bound over to the court of common pleas and the person failed to pay the application fee in the municipal court or the county court, or if a case involving an alleged delinquent child is transferred to the court of common pleas for prosecution as an adult and if the involved child failed to pay the fee in the juvenile court, the court of common pleas must assess the application fee at the initial appearance of the defendant or the child.

The act defines "clerk of court" to mean the clerk of the court of common pleas of the county, the clerk of the juvenile court of the county, the clerk of a municipal court in the county, the clerk of a county-operated municipal court, or the clerk of a county court in the county, whichever is applicable. The act also provides that "county-operated municipal court" has the same meaning as in R.C. 1901.03 (the Auglaize county, Brown county, Clermont county, Columbiana county, Crawford county, Darke county, Hamilton county, Hocking county, Jackson county, Lawrence county, Madison county, Miami county, Morrow county, Ottawa county, Portage county, or Wayne county municipal court).

The above described provisions take effect 90 days after the effective date of the act.

Billing practices of the State Public Defender

(R.C. 120.06(D), 120.13(F), and 120.23(I))

The act modifies how much a county is required to pay the State Public Defender for legal representation. The act requires the State Public Defender to send the county in which the case is filed a bill detailing the actual cost of the legal representation that separately itemizes legal fees and expenses. The county, then, is responsible for paying the State Public Defender (1) for the amount identified as legal fees in the itemized bill, 100% less the state reimbursement rate, as calculated by the State Public Defender for the month the case terminated, and (2) 100% of the amount identified as expenses in the itemized bill.

After payment of the itemized bill, the act permits the county to submit the cost of the expenses (excluding legal fees) to the State Public Defender for reimbursement pursuant to R.C. 120.33.

The act also specifies that if the State Public Defender provides investigation or mitigation services to private appointed counsel or to a county or joint county public defender, other than in certain cases when the Defender has a contract with a county public defender commission or a joint county public defender commission pursuant to R.C. 120.04(C)(7), the State Public Defender is required to send to the county in which the case is filed a bill itemizing the actual cost of the provided services. The county, then, is required to pay 100% of the

amount as set forth in the itemized bill. Upon payment of the bill, the county may submit the cost of the investigation and mitigation services to the State Public Defender for reimbursement pursuant to R.C. 120.33.

Finally, act bill permits funds in the County Representation Fund, discussed above, to be used by the State Public Defender to provide investigation or mitigation services, including investigation or mitigation services to private appointed counsel or a county or joint county public defender, as approved by the court.

DEPARTMENT OF PUBLIC SAFETY

- Creates the Division of Criminal Justice Services in the Department of Public Safety, abolishes the Office of Criminal Justice Services, and generally transfers the Office's personnel and functions to the Division.
- Creates two new funds to segregate the proceeds the State Highway Patrol and the Department of Public Safety Investigative Unit receive for a forfeiture of property pursuant to federal law from the proceeds of property forfeited pursuant to state law.
- Prohibits a court from ordering the Bureau of Motor Vehicles to delete a record of conviction unless the court finds that the deletion is necessary to correct an error, and prohibits the Bureau from complying with such an order unless it states that the deletion is to correct an error.
- Allows persons eligible to obtain any of a number of special license plates for display on a "motor home" to obtain them for use on "recreational vehicles" instead, which include motor homes, travel trailers, truck campers, fifth wheel trailers, and park trailers.
- Establishes that a person operating a police SWAT vehicle who does not hold a commercial driver's license (CDL) does not violate the requirement to have a CDL when operating a commercial motor vehicle.
- Permits the Bureau of Motor Vehicles, when considering an application for a commercial driver's license (CDL), to conduct any inquiries necessary to ensure that issuance or renewal of the CDL would not violate state or federal law.

- Prohibits a court from granting limited driving privileges to operate a commercial motor vehicle to any person whose driver's license or CDL has been suspended or who has been disqualified from operating a commercial motor vehicle.
- Defines a certain type of all-purpose vehicle as a "utility vehicle" and provides that utility vehicles are neither motor vehicles for certain purposes nor all-purpose vehicles.
- Provides that sellers of utility vehicles are not subject to the motor vehicle dealer licensing law unless they sell other vehicles that are motor vehicles.
- Provides that sellers of all-purpose vehicles and off-highway motorcycles are subject only to the motor vehicle dealer licensing law, and provides that persons who sell only snowmobiles are not required to register with any state official.
- Would have required the Division of Homeland Security and the Department of Public Safety to distribute homeland security funds on a county basis unless federal law required otherwise (VETOED).

Creation of the Division of Criminal Justice Services in the Department of Public Safety and abolition of the Office of Criminal Justice Services

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

The act creates of the Division of Criminal Justice Services in the Department of Public Safety, abolishes the previously existing Office of Criminal Justice Services, and generally transfers to the Division the personnel and functions of the Office. These provisions, and related changes made in the act, are discussed in more detail under "**OFFICE OF CRIMINAL JUSTICE SERVICES**," above.

Proceeds from the criminal forfeiture of property to Department of Public Safety agencies under federal law

(R.C. 2923.35, 2923.46, 2925.44, 2933.43, and 2933.74)

The State Highway Patrol and the Investigative Unit of the Department of Public Safety are two law enforcement agencies that may seize property under certain state and federal criminal forfeiture laws. Continuing law provides that if a law enforcement agency seeks forfeiture under federal law, it must deposit, use, and account for the proceeds from a sale or other disposition of the forfeited property in accordance with applicable federal law. Under prior law, if the State Highway Patrol or the Investigative Unit seized property under the Felony Drug Abuse Offense Forfeiture Law (R.C. 2925.41 to 2925.45), the Contraband Forfeiture Law (R.C. 2901.01(A)(13), 2933.42, and 2933.43), and the Criminal Gang Activity Forfeiture Law (R.C. 2923.41 to 2923.47) and sought its forfeiture pursuant to federal law, the appropriate governmental officials were required to deposit the proceeds into the State Highway Patrol Contraband, Forfeiture, and Other Fund or the Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund, as appropriate.

The act renames the State Highway Patrol Contraband, Forfeiture, and Other Fund as the Highway Patrol State Contraband, Forfeiture, and Other Fund; provides that it and the Department of Public Safety Investigative Unit Contraband, Forfeiture, and Other Fund are to receive the proceeds of property forfeited under only state law; and creates two new funds to receive the proceeds of property forfeited to the State Highway Patrol or the Investigative Unit under federal law--the Highway Patrol Federal Contraband, Forfeiture, and Other Fund and the Department of Public Safety Investigative Unit Federal Equitable Share Account Fund. Existing law provides that all investment earnings derived from money, or from the proceeds of money, forfeited under federal law are to be credited to the fund. Similarly, the act specifies that the investment earnings of the two new funds are to be credited to those funds.

Deletion by the Bureau of Motor Vehicles of a record of conviction

(R.C. 4501.37)

Continuing law generally prohibits any court from reversing, suspending, or delaying any order issued by the Registrar of Motor Vehicles, or from enjoining, restraining, or interfering with the Registrar or a deputy registrar in the performance of official duties. The act prohibits a court from ordering the Bureau of Motor Vehicles to delete a record of conviction unless the court finds that deletion of the record of conviction is necessary to correct an error. The act also prohibits the Bureau from complying with a court order that directs the deletion of

a record of conviction unless the order states that the record of conviction is being deleted in order to correct an error.

Display of certain special license plates on recreational vehicles

(R.C. 4503.471, 4503.48, 4503.50, 4503.53, 4503.571, 4503.59, 4503.73, 4503.85, and 4503.91)

Prior law permitted the owners of motor homes, among other specified vehicles, to obtain and display the following special license plates on their motor homes: International Association of Firefighters, Ohio National Guard, United States Armed Forces Reserves, Future Farmers of America, United States Armed Forces, Purple Heart, Pearl Harbor, Leader in Flight, Fish Lake Erie, and Choose Life. The act replaces the term "motor home" with "recreational vehicle," which includes motor homes, travel trailers, truck campers, fifth wheel trailers, and park trailers, thus permitting the owners of all these types of recreational vehicles to obtain and display these special license plates.

Commercial driver's license exemption

(R.C. 4506.03)

Continuing law establishes a general prohibition against driving a commercial motor vehicle without holding a commercial driver's license (CDL). The prohibition does not apply to the operation of certain commercial vehicles that otherwise would require the operator to hold a CDL, including farm trucks, fire equipment, emergency medical service vehicles used to transport ill or injured persons, and vehicles operated for military purposes. Applicable federal law authorizes each of these exemptions.

The act adds a police SWAT team vehicle to the list of commercial vehicles that may be operated by a person who does not hold a CDL, without being in violation of the CDL law. Federal law authorizes this exemption in 49 C.F.R. 383.3.

Commercial driver's licenses

(R.C. 4506.07, 4506.101, and 4506.161)

An application for a commercial driver's license (CDL), restricted CDL, or commercial driver's temporary instruction permit must contain certain specified information as required by the Revised Code, rule, and federal law. The act provides that in considering an application for any of the above, the Bureau of Motor Vehicles may conduct any inquiries necessary to ensure that issuance or renewal would not violate any provision of state or federal law.

In addition, the act provides both of the following:

(1) Notwithstanding any provision of state law, the Bureau cannot issue or renew a CDL if issuance or renewal would violate federal law.

(2) No court may grant limited driving privileges to operate a commercial motor vehicle to any person whose driver's license or CDL has been suspended or who has been disqualified from operating a commercial motor vehicle.

Utility vehicles and the motor vehicle dealer licensing law

(R.C. 4501.01, 4517.01, and 4519.01)

Under continuing law, all dealers in new motor vehicles and generally all persons who sell six or more motor vehicles in a 12-month period must be licensed either as a new motor vehicle dealer or a used motor vehicle dealer under the motor vehicle dealer licensing law (R.C. Chapter 4517.). For purposes of that law, a motor vehicle ". . . also includes 'all-purpose vehicle' . . . [as] defined in section 4519.01 of the Revised Code" If a person sells motorized vehicles that are not "motor vehicles" within the meaning of that term as contained in the motor vehicle dealer licensing law, the person is not selling motor vehicles and therefore is not required to obtain any type of motor vehicle dealer's license.

An all-purpose vehicle is a motor vehicle for purposes of the motor vehicle dealer licensing law, so any person who sells five or fewer all-purpose vehicles in a 12-month period must obtain a motor vehicle dealer's license. The special vehicle law (R.C. Chapter 4519.) previously defined an "all-purpose vehicle" as "any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof . . . *but excluding any self-propelled vehicle not principally used for purposes of personal transportation.*" (Emphasis added.)

The act revises the classification of a vehicle as an all-purpose vehicle by (1) eliminating the phrase "but excluding any self-propelled vehicle not principally used for purposes of personal transportation" from the definition of all-purpose vehicle in the special vehicles law, (2) enacting the new term "utility vehicle" and defining it, and (3) specifying that an "all-purpose vehicle" does not include a "utility vehicle." The act defines a "utility vehicle" as a "self-propelled vehicle designed with a bed, principally for the purpose of transporting material or cargo in connection with construction, agriculture, forestry, grounds maintenance, lawn and garden, materials handling, or similar activities." The act also specifically provides (1) in the general motor vehicle law definitions that a utility vehicle is not a motor vehicle, and (2) in the special vehicle law that a utility vehicle is not an all-purpose vehicle.

Since the act provides in the general motor vehicle law definitions that a utility vehicle is not a motor vehicle and since that definition of "motor vehicle" is utilized in the motor vehicle dealer licensing law, the act excludes from the motor vehicle dealer licensing law any person who sells *only* utility vehicles. Any such person may sell utility vehicles without obtaining a motor vehicle dealer's license so long as the person does not sell other motorized vehicles that are motor vehicles. If the person does sell other motorized vehicles, the person would have to obtain a dealer's license for those other vehicles that are motor vehicles.

In addition, since the act provides in the general motor vehicle law definitions that a utility vehicle is not a motor vehicle and since that definition of "motor vehicle" applies to the certificate of title law, under the act utility vehicles are not subject to the certificate of title law.

Repeal of dealer registration provisions of the special vehicle law

(R.C. 4519.06 and 4519.07)

Prior law required dealers who sold snowmobiles, off-highway motorcycles, and all-purpose vehicles to register with the Registrar of Motor Vehicles under the special vehicles law. Thus, persons who sold off-highway motorcycles and all-purpose vehicles were required to obtain a motor vehicle dealer's license under the motor vehicle dealer licensing law and to register with the Registrar under the special vehicles law. Persons who sold only snowmobiles were required only to register with the Registrar under the special vehicles law. The act repeals outright the special vehicles dealer registration provisions. The result is that persons who sell off-highway motorcycles and all-purpose vehicles are only required to obtain a dealer's license under the motor vehicle dealer's licensing law, while persons who sell only snowmobiles are no longer required to register with any state official.

Finally, the act specifically provides that a snowmobile is not a motor vehicle for purposes of the motor vehicle dealer licensing law.

Homeland security funds

(R.C. 5502.03)

The Governor vetoed a provision that would have required the Division of Homeland Security and the Department of Public Safety to distribute homeland security funds on a county basis and would have prohibited the distribution of the funds on a regional basis unless federal law required distribution on a regional basis. Existing law does not specify requirements for the distribution of homeland security funds.



PUBLIC UTILITIES COMMISSION OF OHIO

- Changes the minimum annual assessment against a railroad and a public utility for maintaining the Public Utilities Commission from \$50 to \$100.
- Beginning in 2006, revises the schedule by which the Commission collects the assessments from utilities.
- Eliminates the need to transfer funds from the General Revenue Fund to the Public Utilities Fund so the Commission can operate during the beginning of each fiscal year.
- Increases the maximum amount the Commission generally may assess against a public utility or a railroad for each violation of statutes or orders from \$1,000 to \$10,000.
- Increases the forfeiture amount the Commission can assess for gas pipeline safety violations from \$10,000 for each day of each violation to \$100,000.
- Caps for each of four state agencies with nuclear safety functions the maximum amount that may be assessed per fiscal year for the agency against nuclear utilities by the Utility Radiological Safety Board, which cap is applicable in the event the utilities and the agency cannot agree on a negotiated grant amount to fund its nuclear safety activities and funding is then to be otherwise provided through an assessment.

Assessments collected from railroads and public utilities for maintaining the Public Utilities Commission

(R.C. 4905.10)

For the purpose of maintaining the Public Utilities Commission (PUCO), each railroad and public utility pays a yearly assessment. The amount is calculated by first computing an assessment in proportion to the intrastate gross earnings or receipts of the railroad or utility for the preceding calendar year. The PUCO may include in the initial computation any amount underreported by a railroad or utility from a prior year. Excluded from the computation are earnings or receipts from sales to other public utilities. Under the act, the PUCO may also exclude from the computation any overreported amount from a prior year.

Under prior law, a final computation of the assessment imposed a \$50 assessment on each railroad and utility whose assessment under the initial computation equaled \$50 or less. The act changes the minimum yearly assessment against each railroad and utility from \$50 to \$100. The railroad and utility payments are deposited in the state treasury to the credit of the Public Utilities Fund.

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

Under prior law, at the beginning of each fiscal year, the Director of Budget and Management transferred an amount from the General Revenue Fund (GRF) to the Public Utilities Fund so the PUCO could maintain operations during the first four months of the fiscal year. The amount transferred by the Director had to be transferred back into the GRF from the Public Utilities Fund by December 31. Under the act, beginning in calendar year 2006, these obligations no longer apply because under the act's new assessment schedule the Public Utilities Fund will receive sufficient revenue from the initial assessment payment to operate at the beginning of each fiscal year.

Forfeitures assessed by the Commission

General forfeitures against a public utility or railroad

(R.C. 4905.54)

The Public Utilities Commission (PUCO) may assess forfeitures against a public utility or a railroad that violates a statute or fails to comply with a Commission order, direction, or requirement. Generally under former law, the maximum forfeiture amount the PUCO could assess was \$1,000 for each violation or failure to comply. The act increases the maximum forfeiture amount for each violation or failure to comply to \$10,000, and specifies that the collected

forfeitures be credited to the General Revenue Fund.²²⁷ Under continuing law, each day's continuance of the violation or failure is a separate offense.

Forfeitures for gas pipe-line safety violations

(R.C. 4905.95)

If the PUCO finds that a gas pipe-line operator violated or failed to comply with the gas pipe-line safety code, the PUCO may assess forfeitures against the operator. The act increases the forfeiture amount from a maximum of \$10,000 for each day of each violation to a maximum of \$100,000. Under continuing law, the aggregate cap on the amount of such forfeitures that may be assessed against an operator for a related series of violations or noncompliances is \$500,000. These forfeitures are also credited to the General Revenue Fund.

Utility Radiological Safety Board Assessments

(Section 306.03)

Under continuing law, the Utility Radiological Safety Board's (URSB) authority to levy assessments against nuclear utilities is limited in part by assessment caps specified in main operating appropriations acts. The main funding source for the nuclear safety functions of state agencies that are URSB members are direct grants negotiated between each member agency and Ohio's nuclear electric utilities but, if a member agency disagrees with a grant amount, it can obtain funding by requesting the URSB to levy assessments against the utilities in amounts generally proportional to their intrastate gross receipts. If a member agency seeks an assessment that would exceed 75% of the applicable budgetary cap, continuing law provides that the member agency may request Controlling Board approval of the assessment. The Controlling Board cannot approve an assessment that exceeds the budgetary maximum or that will be used for unauthorized purposes. The act specifies for four member agencies maximums that are constant in amount for FY 2006 and 2007, in the fiscal year amounts of \$73,059 for the Department of Agriculture, \$850,000 for the Department of Health, \$286,114 for the Environmental Protection Agency, and \$1,260,000 for the Emergency Management Agency.

²²⁷ *A maximum forfeiture of \$10,000 for each day of each violation can already be assessed for violations or failures to comply under R.C. 4905.83 dealing with hazardous materials, R.C. 4905.95 dealing with operators of gas pipe-lines (the act increases maximum gas pipe-line forfeiture to \$100,000), and R.C. 4919.99, 4921.99, and 4923.99 dealing with a roadside inspection for an interstate operator, a motor transportation company, and a private motor carrier, respectively.*

OHIO BOARD OF REGENTS

- Establishes a tuition cap of 6%, or \$500 per full-time student, on annual increases of in-state undergraduate instructional and general fees at state institutions of higher education.
- Phases out the Ohio Instructional Grant (OIG) Program by limiting participation to students who enroll in an undergraduate program before the 2006-2007 academic year.
- Replaces the OIG Program with the Ohio College Opportunity Grant Program, a need-based financial aid program for students who first enroll in an undergraduate program in or after the 2006-2007 academic year.
- Permits the Board of Regents, in its rules for the Ohio College Opportunity Grant Program, to give preferential or priority funding to low-income students who met academic performance standards in elementary and secondary schools.
- Specifies that, in addition to refunds of OIG payments as under current law, refunds of payments made under the new Ohio College Opportunity Grant Program be paid into the Instructional Grant Reconciliation Fund, and changes the name of the fund to the State Need-Based Financial Aid Reconciliation Fund.
- Requires the Board of Regents to conduct audits to determine the validity of information provided by students and parents regarding eligibility for financial aid and requires institutions of higher education to adjust students' financial aid award where the Board determines appropriate.
- Requires the Board of Regents to conduct audits to ensure that institutions of higher education are complying with the Board's financial aid rules, and specifies that the institutions are fully liable to reimburse the Board for the unauthorized use of financial aid funds.
- Requires the Board of Regents to adopt a rule establishing fees to fund the cost of (1) reviewing an application for a certificate of authorization to award degrees at a nonpublic institution and (2) reviews determined necessary upon examining a nonpublic institution's annual report.

- Requires the Board of Regents to develop criteria, policies, and procedures by April 15, 2007, to ensure that students can transfer technical courses to state institutions of higher education.
- Sets a December 30, 2005, deadline for the State Architect to establish the Local Administration Competency Certification Program (enacted by Am. Sub. H.B. 16 of the 126th General Assembly to certify state universities and state community colleges to administer their own capital facilities projects).
- Specifies that an institution's local administration competency certification remains valid unless revoked by the State Architect for failure (1) to employ a sufficient number of personnel who have successfully completed the certification program or (2) to conduct biennial audits of self-administered capital facilities projects.
- Requires state colleges and universities to award printing contracts under provisions of the "Buy Ohio" Law that governs the award of contracts for goods and services by the Department of Administrative Services and other state agencies.
- Creates in the state treasury the National Guard Scholarship Reserve Fund for purposes of paying scholarship obligations in excess of the GRF appropriations made for that purpose, and authorizes the Director of Budget and Management to transfer from the GRF to the Reserve Fund an amount not exceeding the prior year's unencumbered balance of GRF appropriations made for purposes of the Ohio National Guard Scholarship Program.
- Requires the Chancellor of the Board of Regents to allocate up to \$70,000 for scholarships per year for students enrolled in the Columbus Program in Intergovernmental Issues at Kent State University, if there are sufficient funds available from General Revenue Fund appropriations made to the Board.
- Allows the treasurer of Shawnee State University to be insured, rather than bonded, for the amount of money in the treasurer's sole control, minus a reasonable deductible, and removes the requirement for Attorney General approval in cases where the treasurer is bonded.

- Adds Warren County to the Montgomery County community college district, adds two residents of Warren County to the district board of trustees, and specifies policies for trustee voting authority, tax levies, tuition rates, and bonding for the new, two-county district.
- Applies the enrollment caps to students enrolled on a "full-time" basis (rather than a "full-time equivalent" basis) at the central campuses of the following universities: (1) Bowling Green, (2) Kent State, (3) Miami, (4) Ohio, and (5) Ohio State.
- Stipulates the distribution of Nurse Education Assistance Program loans from July 1, 2005 to January 1, 2012.
- Allows a portion of a Nurse Education Assistance Program loan to be forgiven when a nurse, after graduation, obtains employment as a faculty member for a nursing program.
- Adds six additional trustees to the Ohio State University Board of Trustees, with the terms of three members beginning in 2005 and the terms of the other three new members beginning in 2006.

Cap on undergraduate tuition increases at state institutions of higher education

(Section 209.63.60)

The act imposes a limit on the amount of in-state, undergraduate instructional and general fees the board of trustees of a state university, community college, state community college, technical college, and university branch (collectively, "state institutions") may charge. For the 2005-2006 and 2006-2007 academic years, the boards of trustees of these state institutions may only increase undergraduate instructional and general fees for Ohio residents by the lesser of 6%, or \$500 per full-time student.

As in previous biennia when the General Assembly has imposed tuition caps, the act authorizes an institution to increase tuition above the stated cap to comply with institutional covenants related to obligations, unfunded mandates, or legally binding obligations or commitments made before the act's effective date, with respect to which the institution identified the fee increase as the source of the funds. The Board of Regents must report these additional increases to the Controlling Board. In addition, the Board of Regents, with the Controlling Board's approval, may modify the caps "to respond to exceptional circumstances."

Phasing out of the Ohio Instructional Grant Program

(R.C. 3333.12)

The Board of Regents administers the Ohio Instructional Grant Program, which pays grants to full-time, Ohio resident students who attend a public, private nonprofit, or career institution of higher education in Ohio and are enrolled in a program leading to an associate or bachelor's degree. The Board establishes all rules concerning applications for the grants.

Grant amounts vary based on whether an applicant is financially dependent or independent; the combined family income (if dependent) or the student and spouse income (if independent); the number of dependents; and whether the applicant attends a private nonprofit, public, or career institution. The amount of the grant cannot exceed the total instructional and general fees charged by the student's school.

The act phases out the Program by limiting participation to students who enroll in an undergraduate program before the 2006-2007 academic year. The grant amounts are unchanged for the biennium, remaining at the levels set for fiscal year 2005.

Creation of the Ohio College Opportunity Grant Program

(substantive provisions in R.C. 3333.122 and 3333.123; conforming changes in R.C. 3315.37, 3332.092, 3333.04, 3333.044, 3333.27, 3333.28(F), 3333.38, 3345.32, and 5107.58)

The act creates the Ohio College Opportunity Grant Program as a substitute for the Ohio Instructional Grant Program for students who are residents of Ohio and first enroll in an undergraduate program in or after the 2006-2007 academic year.²²⁸ The grant amount awarded to the student is based on the United States Department of Education's method of determining financial need. This is done by determining the student's "Expected Family Contribution" (EFC).

Eligibility

To receive a grant the student must be enrolled in one of the following:

²²⁸ *Students who participated in either the Early College High School Program or the Post-Secondary Enrollment Options Program before the 2006-2007 academic year, are not excluded from eligibility for a grant. See R.C. 3333.122(A)(2).*

(1) An accredited institution of higher education in Ohio that meets the requirements of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance;

(2) A nonprofit institution that has a certificate of authorization from the Board of Regents;

(3) A private institution that has a certificate of registration from the State Board of Career Colleges and Schools and program authorization from the Board of Regents to award an associate or bachelor's degree;

(4) A for-profit institution that is exempt from regulation by the Board of Career Colleges and Schools, but for which the Board of Regents has issued a certificate of authorization, and is accredited by the appropriate accrediting association;²²⁹

(5) A technical education program sponsored by a private institution in Ohio that is at least two years in duration, and that meets the requirements of Title VI of the Civil Rights Act of 1964.

The Board is directed to prescribe the manner of applications for the grants. The applications can be made in conjunction with the United States government's or the institution of higher education's student assistance programs. The grants are to be paid through the institution in which the student is enrolled. The institution must certify the student's eligibility for the grant.

A grant is available to a student as long as the student is making adequate progress towards a nursing diploma or an associate or bachelor's degree, but no student may receive a grant for more than the equivalent of five academic years. If the student is taking fewer than the number of hours needed to be considered full-time, a grant to that student is based on the number of credit hours the student is enrolled. However, no student may receive more than one grant on the basis of less than full-time enrollment. The act requires the Board to define "full-time student," "three-quarters-time student," "half-time student," and "one-quarter-time student."

²²⁹ *Currently, this provision applies to only DeVry University and the University of Phoenix.*

Priority for low-income students based on elementary and secondary achievement

The act permits the Board of Regents, in its rules for the Ohio College Opportunity Grant Program, to give preferential or priority funding to low-income students who, in their elementary and secondary school work, participate in or complete rigorous academic coursework, attain passing scores on the state achievement tests, or meet other high academic performance standards determined by the Board to reduce the need for remediation and ensure academic success at the postsecondary education level. Any such rules must specify procedures to certify student achievement as well as the timeline for the Board's implementation of these preferential provisions.

Amount of grant awards per academic year

Separate tables set forth the grant amounts, one for each category of student (full-time, three-quarters-time, half-time, or one-quarter-time, based on the number of credit hours). Each table varies the grant amounts based on the ranges of expected family contribution and the type of institution in which the student is enrolled (public, private, or career). The grant is for one academic year, which represents two semesters or three quarters. If a full-time student is enrolled for an additional semester or quarter in an academic year, the student may receive another grant, equal to a portion of the maximum prescribed amount, for that additional term.

The maximum expected family contribution that a student could have and still be eligible for a grant is \$2,190. A full-time student with that expected family contribution score would then be eligible for a \$300 grant if attending a public institution, a \$480 grant if attending a career college, or a \$600 grant if attending a private nonprofit institution. If a full-time student's expected family contribution is \$0, the student would be eligible for a \$2,496 grant if attending a public institution, a \$3,996 grant if attending a career college, or a \$4,992 grant if attending a private nonprofit institution.

A three-quarters-time student with an expected family contribution of \$2,190 would be eligible for a \$228 grant if attending a public institution, a \$360 grant if attending a career college, or a \$450 grant if attending a private nonprofit institution. A three-quarters-time student with an expected family contribution of \$0 would be eligible for a \$1,872 grant if attending a public institution, a \$3,000 grant if attending a career college, or a \$3,744 grant if attending a private nonprofit institution.

A half-time student with an expected family contribution of \$2,190 would be eligible for a \$150 grant if attending a public institution, a \$240 grant if

attending a career college, or a \$300 grant if attending a private nonprofit institution. A half-time student with an expected family contribution of \$0 would be eligible for a \$1,248 grant if attending a public institution, a \$1,998 grant if attending a career college, or a \$2,496 grant if attending a private nonprofit institution.

A one-quarter-time student with an expected family contribution of \$2,190 would be eligible for a \$78 grant if attending a public institution, a \$120 grant if attending a career college, or a \$150 grant if attending a private nonprofit institution. A one-quarter-time student with an expected family contribution of \$0 would be eligible for a \$624 grant if attending a public institution, a \$1,002 grant if attending a career college, or a \$1,248 grant if attending a private nonprofit institution.

Ineligibility for a grant

As with the Ohio Instructional Grant program, there are three situations in which a student who otherwise would be eligible to receive a grant would be determined ineligible. First, no grant may be awarded to a person serving a term of imprisonment. Second, a student studying theology, religion, or another field in preparation for a religious profession is ineligible if the program does not lead to an accredited bachelor of arts, bachelor of science, associate of arts, or associate of science degree.

Third, a student is ineligible to receive a grant if the student is attending an institution with a cohort default rate, as determined by the U.S. Secretary of Education, equal to or greater than 30% for each of the preceding two fiscal years. The "cohort default rate" means the number of current and former students of an institution who default on federally guaranteed student loans.²³⁰ However, a student would still be eligible if, upon recalculation, the cohort default is lower than 30%, if the Secretary allows the institution to continue to participate in federal financial aid programs, or if the student has previously received an Ohio College Opportunity Grant and meets all other eligibility requirements.

Institutions must refund grants to the state if student no longer eligible

The act requires institutions to refund money due to the state if the institution receives grants for students who are no longer eligible for all or any part of the grant. The institution must refund the money due within 30 days after the beginning of the quarter or term immediately following the quarter or term in which the student was no longer eligible to receive all or part of the grant. If the

²³⁰ See 20 U.S.C. 1085.

institution fails to refund the money in the allowed time, there is a 1% per month interest charge.

State Need-Based Financial Aid Reconciliation Fund

(R.C. 3333.121)

The act renames the Instructional Grant Reconciliation Fund as the State Need-Based Financial Aid Reconciliation Fund. This fund is to receive refunds of Ohio Instructional Grant payments (as under prior law) and refunds of Ohio College Opportunity Grant payments, both made by institutions when they receive grant moneys under those programs for students who are not eligible to receive them. Similar to prior law, money in the fund is to be used by the Board of Regents to pay institutions of higher education any outstanding obligations owed from the prior year for the grant programs. Any amount in the fund that exceeds the amount necessary to reconcile prior year payments must be transferred to the General Revenue Fund.

Financial aid audits

(R.C. 3333.047)

The act directs the Board of Regents to conduct two types of audits for state financial aid programs. First, the Board is required to conduct audits to determine the validity of information regarding eligibility for financial aid that is provided by students and parents. Each institution must adjust a student's financial aid if the Board determines such action to be appropriate due to the reporting of inaccurate eligibility data. Second, the Board must conduct audits to ensure that the institutions of higher education are complying with the Board's rules governing state student financial aid programs. If an audit finds that an institution has failed to comply with rules, the institution is "fully liable" to reimburse the Board for the unauthorized use of student financial aid funds.

Fees for certificates of authorization and annual reports

(R.C. 1713.03)

Continuing law requires that, before a private institution of higher education or a career college may offer a degree, it must receive a certificate of authorization from the Board of Regents. The institution must apply to the Board for the certificate, and must file an annual report with the Board.

The act requires the Board of Regents to establish fees, which each private institution must pay, for reviewing applications for certificates of authorization

and for further reviews the Board determines are necessary after examining the institution's annual reports.

Transfer of career-technical education coursework to state institutions of higher education

(R.C. 3333.162)

The act expands the scope of the current articulation and transfer system to include career-technical institutions by requiring the Board of Regents to develop criteria, policies, and procedures by April 15, 2007, to enable students to transfer "agreed upon" technical courses completed through an adult career-technical education institution, a public secondary career-technical institution, or a state institution of higher education to a state institution of higher education "without unnecessary duplication or institutional barriers." The Board is directed to develop these criteria, policies, and procedures in consultation with the Department of Education, public adult and secondary career-technical education institutions, and state institutions of higher education. The criteria, policies, and procedures must build upon the existing articulation agreement and transfer initiative course equivalency system, where applicable. The Board must report its progress on this issue to the General Assembly by April 15, 2006.

Local administration competency certification program

(R.C. 123.17)

Background

Am. Sub. H.B. 16 of the 126th General Assembly, the capital appropriations act for the 2005-2006 biennium, requires the State Architect to create a local administration competency certification program to certify state universities and state community colleges to administer capital facilities projects without oversight from the Department of Administrative Services (DAS). To be certified under the program, an institution must select employees responsible for administering capital facilities projects to participate in the program. The program must provide instruction about the Public Improvements Law and DAS rules and policies regarding capital projects. Specifically, the program must cover (1) the planning, design, and construction process, (2) contract requirements, (3) construction management, and (4) project management.

The State Architect must award local administration competency certification to a state university or state community college that meets the following criteria:

(1) The institution applies for certification in the manner prescribed by the State Architect;

(2) The State Architect determines that a sufficient number of the institution's employees, representing a sufficient number of employee classifications, has completed the program to ensure that the institution's capital projects will be conducted successfully and in accordance with law;

(3) The institution's board of trustees provides written assurance that the institution will enroll additional employees in the certification program as needed to compensate for employee turnover;

(4) The State Architect determines that the employees who have completed the program demonstrate satisfactory knowledge of and competency in the requirements for administering capital projects;

(5) The board of trustees provides written assurance that the institution will conduct biennial audits of its administration of capital projects;

(6) The board of trustees agrees in writing to hold the state and DAS harmless for any claim of injury, loss, or damage resulting from the institution's administration of a capital project; and

(7) The institution pays a program fee.

The act

The act makes four changes to the local administration competency certification program. First, it directs the State Architect to establish the program by December 30, 2005. Second, it specifies that the program fee established by the State Architect is subject to approval by the Director of Budget and Management. The fee amount must cover the costs of implementing the program, including the costs for instructional materials and training sessions. Third, it specifies that the State Architect must determine that an institution's employees have "successfully" completed the certification program prior to awarding certification.

Finally, the act requires the State Architect to revoke an institution's certification to administer its own capital facilities projects upon the State Architect's determination that the institution either (1) has not maintained a sufficient number of employees responsible for the administration of capital projects who have successfully completed the certification program and demonstrated satisfactory knowledge of and competency in the requirements for administering those projects or (2) is not conducting biennial audits of its capital projects. An institution's certification remains valid unless revoked for one of

these reasons. When certification is revoked, the State Architect must provide written notification of that fact to the institution's board of trustees.

Award of state college and university printing contracts

(R.C. 3345.10)

Prior law

Prior law required state universities, municipal universities, state medical colleges, community colleges, technical colleges, and state community colleges to establish competitive bidding procedures for the purchase of *printed material* and to award all contracts for printed material in accordance with those procedures. Those contracts generally had to be let to *vendors who have manufacturing facilities within Ohio*. If, however, the required printed materials were not available from such a vendor, an institution could purchase the materials from an out-of-state vendor. Vendors with manufacturing facilities within Ohio that would "execute the printing covered by a proposal" could not be prohibited from submitting a proposal for consideration, and any such proposal that was properly submitted had to be considered by a state institution of higher education.

Changes by the act

The act continues to require state institutions of higher education (defined to mean each of the four-year state universities, the Northeastern Ohio Universities College of Medicine, the Medical University of Ohio at Toledo, and each community college, state community college, university branch, or technical college) to establish competitive bidding procedures for the purchase of printed material and to award all contracts for printed material in accordance with those procedures. But it eliminates the remainder of the prior law described above, and instead mandates that the procedures an institution establishes require the institution to evaluate all bids for printed material in accordance with the *relevant criteria and procedures established in the "Buy Ohio" Law* that govern purchases by the Department of Administrative Services and other state agencies, when determining (a) whether bidders will produce the printed material at manufacturing facilities within Ohio or (b) whether out-of-state bidders *are located in states bordering Ohio or have a significant Ohio presence and, thus, are also qualified to bid*. One of these criterion is that a non-Ohio business cannot bid on a *contract for state printing* if the business is located in a state that excludes Ohio businesses from bidding on state printing contracts in that state. (See R.C. 125.09(C)--not in the act.)

The institution must select, in accordance with the procedures it establishes, a bid for printed materials from among bidders that fulfill the relevant Buy Ohio



Law criteria where sufficient competition can be generated within Ohio to ensure that compliance with this requirement will not result in paying an excessive price or acquiring a disproportionately inferior product. If there are two or more bids from among those bidders, the act declares that there is sufficient competition to prevent paying an excessive price or acquiring a disproportionately inferior product.

National Guard Scholarship Reserve Fund

(R.C. 5919.341)

The Ohio National Guard Scholarship Program provides scholarships to institutions of higher education in Ohio for a specified number of eligible National Guard participants (R.C. 5919.34, not in the act). The act creates in the state treasury the National Guard Scholarship Reserve Fund for purposes of paying scholarship obligations in excess of the General Revenue Fund (GRF) appropriations made for that purpose.

The Ohio Board of Regents must certify to the Director of Budget and Management, not later than July 1 of each fiscal year, the unencumbered balance of the GRF appropriations made in the immediately preceding fiscal year for purposes of the National Guard Scholarship Program. Upon receipt of the certification, the Director may transfer an amount not exceeding the certified amount from the GRF to the National Guard Scholarship Reserve Fund. Money in the Reserve Fund is to be used to pay scholarship obligations in excess of the GRF appropriations made for that purpose. At the request of the Adjutant General, the Board of Regents must seek Controlling Board approval to establish appropriations as necessary.

The Director may transfer any unencumbered balance from the Reserve Fund to the GRF.

Kent State University's Columbus Program in Intergovernmental Issues

(R.C. 3333.36)

The act requires, rather than permits as under prior law, the Chancellor of the Board of Regents to allocate up to \$70,000 of the funds appropriated to the Board in each fiscal year for the Columbus Program in Intergovernmental Issues at Kent State University, provided there are sufficient funds available from General Revenue Fund appropriations made to the Board that are unencumbered and unexpended. The Chancellor may use any General Revenue Funds appropriated to the Board that the Chancellor determines are available to fund scholarships for students in the program. The Columbus Program in Intergovernmental Issues is

an internship program offered by Kent State University that awards scholarships of up to \$2,000 per student.

Insurance for treasurer of Shawnee State University

(R.C. 3362.02)

Prior law required (1) the treasurer of Shawnee State University to post bond for an amount at least equal to the estimated amount of money which may come into the treasurer's control at any time and (2) that the bond be approved by the Attorney General. The act changes the minimum amount of the bond to the amount of money coming under the treasurer's *sole* control and eliminates the necessity for the Attorney General to approve the bond. In addition, the act provides the alternative for the treasurer to be *insured*, rather than bonded. The insurance would have to be for the same amount as required for the bond, "less any reasonable deductible."

Warren County-Montgomery County community college district

(R.C. 3354.25; Section 490.04)

Prior (uncodified) law created a new community college district within Warren County and required the Board of Regents to issue a charter for a new community college to be operated jointly with the Warren County Career Center. A board of trustees, appointed by the Governor and the Warren County Board of County Commissioners was authorized only to carry out organizational activities and was not permitted to offer courses prior to July 1, 2005.

The act repeals this section of uncodified law and instead adds Warren County to the territory of the Montgomery County community college district, which operates Sinclair Community College. The new Warren County-Montgomery County district may operate under the name of the "Sinclair Community College District."

Board of trustees membership

The nine Montgomery County members of the Sinclair board of trustees remain, their five-year, staggered terms to continue and their successors to be appointed as otherwise provided by law. The act adds two Warren County residents to the board. One Warren County member must be appointed by the Governor, with the advice and consent of the Senate, and the other must be appointed by the Warren County board of county commissioners. After their appointment, there must be a drawing to determine their initial terms. One will serve for three years, the other for five years, after the expiration date of the Montgomery County trustee's term that is first to expire. Thereafter, their



successors will serve for terms of five years, the same length of term as the Montgomery County trustees.

Community college taxes and bonds in each county

Community college districts may seek voter approval of property tax levies. The act divides the Sinclair district into two taxing subdistricts, each county comprising a subdistrict. Tax revenues raised from each county may be used only for the benefit of that county's residents attending Sinclair Community College, in the form of student tuition subsidy, student scholarships, and instructional facilities, equipment, and support services. Taxes from each county must be deposited into separate funds from all other district revenues and budgeted separately.

The act requires approval of two-thirds of the board of county commissioners of Warren County before a community college tax proposal may be placed on the ballot in Warren County. There is not a similar condition for Montgomery County or for any other community college district.

Trustees' voting powers

Trustees of both counties may vote on all matters, subject to two conditions. First, passage of any matter related to community college programming or facilities within one county or the other requires *both* a majority vote of the entire board *and* the vote of at least 50% (that is, at least five Montgomery County trustees or one Warren County trustee) of the trustees from the affected county.

Second, until a qualifying tax is levied in Warren County, the trustees from each county have no vote on any of the following matters pertaining to the other county: (1) tax levies, (2) the expenditure of tax revenue, and (3) tax-subsidized tuition rates. That is, until a qualifying Warren County levy passes, Warren County trustees cannot vote on placing Montgomery County tax levies on the ballot, the expenditure of Montgomery County tax revenues, or the subsidizing of tuition with Montgomery County tax revenues. Likewise, the Montgomery County trustees cannot vote on these matters pertaining to Warren County. A Warren County community college tax that qualifies all trustees to vote on all matters is one that either:

(a) In the first tax year yields revenue per capita equal to or exceeding the yield per capita of community college taxes levied in Montgomery County, as jointly determined by the county auditors of the two counties; or



(b) In the first tax year imposes a millage rate equal to or exceeding the effective community college tax rate in Montgomery County, as jointly determined by the two county auditors.

Once a qualifying tax is levied in Warren County, the restrictions of the second condition are lifted. If, however, Warren County voters subsequently reduce the millage of the Warren County tax to the extent the tax no longer satisfies (a) or (b), above, the restrictions again apply, beginning on the first day of the first tax year after the voters reduce the millage.

Tuition for Warren County residents

Until a community college tax is levied in Warren County, residents of that county must continue to be charged higher tuition than Montgomery County residents, the same as Ohio residents who live outside the district. After a tax is approved in Warren County, the board of trustees may use the revenues to subsidize tuition for Warren County residents and reduce their tuition rates.

Bonds

Community college districts may seek voter approval to issue bonds. The act permits the board of trustees of the Sinclair Community College district to seek voter approval in one or both counties. If the board opts to seek approval in only one county, it may limit the use of the bond proceeds to benefit the residents of that county. Moreover, if the board opts to seek voter approval only in Warren County, the proposal must be approved by two-thirds of the board of county commissioners of Warren County before it is placed on the ballot.

University enrollment caps

(R.C. 3345.19)

The act revises the method of complying with the statutory caps on the number of students enrolled per quarter at the central campuses of five state universities. It applies the numerical caps for each campus to the number of students enrolled on a "full-time" basis, rather than on a "full-time equivalent" basis. The numerical values of the caps, unchanged by the act, are:

Bowling Green central campus	17,000
Kent State central campus	22,000
Miami central campus	17,000
Ohio University central campus	22,000
Ohio State University central campus	42,000



Nurse Education Assistance Program loans

(R.C. 3333.28)

The Ohio Board of Regents operates an ongoing program, the Nurse Education Assistance Program, the purpose of which is to make loans to students enrolled in nurse education programs. Funds from the state treasury's Nurse Education Assistance Fund are used for the student loans and the program's administrative costs. The act stipulates the distribution of money from the Nurse Education Assistance Fund for the period from July 1, 2005 to January 1, 2012.

The act provides that 50% of available funds must be awarded as loans, each for a minimum of \$5,000 per year, to registered nurses enrolled in postlicensure nurse education programs approved by the Board of Regents or that are offered by an institution certified by the Board. In order to be eligible for the loan, the applicant must provide the Board with a letter of intent to practice in Ohio as a faculty member for a prelicensure or postlicensure nursing program upon the completion of their academic program. If the borrower secures employment as a faculty member for an approved nursing education program within six months following graduation, the Board may forgive the principal and interest of the student's loan at a rate of 25% per year, for a maximum of four years, for each year in which the borrower is so employed. These loans are awarded based on a student's expected family contribution, with preference given to those applicants with the lowest expected family contribution. However, the act permits the Board to consider other factors that it believes to be relevant in ranking loan applications.

The act further requires that 25% of the available funds in the Nurse Education Assistance Fund be awarded to students enrolled in prelicensure nurse education programs for registered nurses and 25% of available funds be awarded to students enrolled in prelicensure professional nurse education programs for licensed practical nurses.

The act directs the Board to determine the manner in which funds from the Nurse Education Assistance Fund are distributed after January 1, 2012.

The Ohio State University Board of Trustees membership

(R.C. 3335.02)

Prior to the act, the Ohio State University Board of Trustees consisted of 11 members, including two student members. The non-student members are appointed to nine-year terms and the student members are appointed to two-year terms.



The act increases the number of trustees to 14 in 2005 and 17 in 2006. The initial terms of office for the three additional trustees appointed in 2005 begin on a date in 2005 that is selected by the Governor. One of these terms expires on May 13, 2009; one expires on May 13, 2010; and one expires on May 13, 2011, as designated by the Governor upon appointment. The initial terms of office for the three additional trustees appointed in 2006 begin on May 14, 2006. One of these terms expires on May 13, 2012; one term expires on May 13, 2013; and one term expires on May 13, 2014, as designated by the Governor upon appointment. After these initial terms, the terms of office are for nine years. The terms of student members are unaffected by the act.

DEPARTMENT OF REHABILITATION AND CORRECTION

- Requires that necessary medical care for a person confined in a county jail or state correctional institution or in the custody of a law enforcement officer prior to confinement that cannot be provided by the jail's or institution's regular physician be provided by a medical provider at the Medicaid reimbursement rate.
- Creates the temporary 17-member Correctional Faith-Based Initiatives Task Force to study faith-based solutions to problems in the correctional system and to report to the Governor, Speaker of the House, and President of the Senate.
- Requires a sexually violent predator who has been released from prison to be supervised by the Adult Parole Authority with an active global positioning system device for the offender's entire life, unless the court removes the sexually violent predator classification from the offender.
- Specifies that the cost of administering the supervision of a sexually violent predator with an active global positioning system is funded from the existing Reparations Fund through the Sex Offender Supervision Fund, created by the act.

Payment for necessary medical care of persons confined in a county jail or a state correctional institution at the Medicaid reimbursement rate

(R.C. 341.192)

If necessary medical care for a person confined in a county jail or state correctional institution or who is in the custody of a law enforcement officer prior to confinement in the county jail or state correctional institution cannot be provided by the regular physician of the jail or institution, the act requires that the medical care be provided by a medical provider and requires the county or the Department of Rehabilitation and Correction to pay a medical provider for necessary care an amount not exceeding the authorized Medicaid reimbursement rate for the same service. The act defines "necessary care" as medical care of a nonelective nature that cannot be postponed until after the period of confinement of a person who is confined in a county jail or state correctional institution or in the custody of a law enforcement officer without endangering the life or health of the person. It also defines "medical provider" as a physician, hospital, laboratory, pharmacy, or other health care provider that is not employed by or under contract to a county or the Department of Rehabilitation and Correction to provide medical services to persons confined in the county jail or state correctional institution. It defines "medical assistance program" as the program established by the Department of Job and Family Services to provide medical assistance under Medicaid.

Assessment of library fees

(R.C. 3375.40)

The act permits the board of library trustees of a school district public library, county free public library, township free public library, municipal free public library, county library district, or regional library district to assess uniform fees for the provision of services to patrons of the library, with the exception that a fee may not be assessed for the circulation of printed materials. That exception, however, does not prevent a board of library trustees from assessing fines for printed materials that are not returned in accordance with the board's rules.

Correctional Faith-Based Initiatives Task Force

(Section 503.09)

The act creates the temporary 17-member Correctional Faith-Based Initiatives Task Force consisting of two members of the House of Representatives, one appointed by the Speaker and one appointed by the Speaker after considering the recommendation of the House Minority Leader; two members of the Senate,

one appointed by the President and one appointed by the President after considering the recommendation of the Senate Minority Leader; two members appointed by the Governor; the Directors of Rehabilitation and Correction, Job and Family Services, Youth Services, Alcohol and Drug Addiction, and Mental Health or each director's designee; three members appointed by the Director of Rehabilitation and Correction who have experience or expertise in correction faith-based programs; one member appointed by the Director of Youth Services who has expertise or experience in the juvenile court system; the Executive Director of the Division of Criminal Justice Services or the Executive Director's designee; and one member appointed by the executive assistant in charge of the Governor's Office of Faith-Based and Community Initiatives. The task force is co-chaired by the Director of Rehabilitation and Correction or the director's designee and the Speaker's appointee and will meet at least once a month. The task force will study seamless faith-based solutions to problems in the correctional system, examine existing faith-based programs in persons in Ohio and other states and consider the adoption of other states' programs in Ohio, and consider the development of model faith-based penal institutions or faith-based units within penal institutions and faith-based programs to reduce recidivism, improve prison management, and deal with juveniles who have been held over to or are in the adult penal system or who have parents who are incarcerated. Within one year of its creation, the task force will submit a written report and recommendations to the Governor, Speaker of the House, and President of the Senate, whereupon it will cease to exist.

GPS monitoring of sexually violent predators

(R.C. 2743.191 and 2971.05)

The Sexually Violent Predator Law applies to a person who on or after January 1, 1997, is convicted of or pleads guilty to a sexually violent offense and is found likely to engage in the future in one or more sexually violent offenses (R.C. 2971.01(H), *not in the act*).²³¹

Generally, a sexually violent predator who is sentenced to a prison term that is not life imprisonment without parole must serve the entire prison term in a

²³¹ A "sexually violent offense" means a violent sex offense (a violation of R.C. 2907.02, 2907.03, former R.C. 2907.12, or R.C. 2907.05(A)(4)) or a designated homicide, assault, or kidnapping offense (a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2903.04(A) or an attempt to commit or complicity in committing one of these offenses) that the offender commits with sexual motivation. "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender. (R.C. 2971.01(B), (G), (J), and (L), not in the act.)

state correctional institution and is not eligible for judicial release. However, if the court has control over the prison sentence and finds by clear and convincing evidence that the offender does not represent a substantial risk of physical harm to others, the court may issue an order modifying the prison term so that the offender need not serve the entire term in a state correctional institution but rather may serve the term in a manner that the court considers appropriate. Also, if the court finds by clear and convincing evidence that the offender is unlikely to commit a sexually violent offense in the future, the court may terminate the offender's prison term, subject to completion of a five-year period of conditional release. (R.C. 2971.05.)

The act requires the Adult Parole Authority to supervise an offender whose prison term is modified or terminated, as discussed in the previous paragraph, with a global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. An offender is subject to supervision with a global positioning system device for life, unless a court removes the offender's classification as a sexually violent predator. The act specifies that the cost of administering the supervision of a sexually violent predator with an active global positioning system is funded from the Reparations Fund, created pursuant to R.C. 2743.191, through the Sex Offender Supervision Fund, created by the act (Section 209.69).

RETIREMENT SYSTEMS

- Eliminates a requirement that an annual payment of \$1.2 million be made by the state to the Ohio Police and Fire Pension Fund.
- Includes municipal public safety directors in the law enforcement division of the Public Employees Retirement System.
- Allows the state retirement boards to retain independent legal counsel if informed of an allegation that the entire board has breached its fiduciary duty to the respective retirement system.

Elimination of appropriation to Ohio Police and Fire Pension Fund

(R.C. 742.36 (repealed) and 742.59)

The act eliminates a requirement that the state make an annual payment of \$1.2 million to the Ohio Police and Fire Pension Fund (OP&F). This payment,



known as the "state contribution," was deposited in the Police Officers' Employers Contribution Fund and the Firefighters' Employers Contribution Fund, into which employer contributions and interest earned on the contributions are deposited. According to the Ohio Retirement Study Council, the state contribution was made by the state annually to the local police and firemen pension funds in existence prior to their consolidation into OP&F in 1967. The state contribution continued to be paid to OP&F and had remained unchanged since the consolidation in 1967.²³²

Municipal public safety directors included in PERS-LE

(R.C. 145.01 and 145.33; Section 569.12)

The act adds municipal public safety directors to the employees eligible to participate in the law enforcement division of the Public Employees Retirement System (PERS-LE).²³³ The act defines "municipal public safety director" as a person who is employed full-time as the public safety director of a municipal corporation with the duty of directing the activities of the municipal corporation's police department and fire department. The act gives current PERS members who are municipal public safety directors until November 1, 2005 to give notice to the retirement system of whether they want to be included in PERS-LE. Municipal public safety directors whose service in that position begins after this provision of the act goes into effect are automatically included in PERS-LE.

Retaining independent legal counsel

(R.C. 109.98)

Under continuing law unchanged by the act, the Attorney General is the legal advisor for each of the state retirement boards.²³⁴ Additionally under

²³² Ohio Retirement Study Council. "Ohio Retirement Systems General Revenue Fund--Subsidies," p. 2 www.orsc.org, visited 02-07-05.

²³³ PERS has special provisions for members who are law enforcement officers. PERS-LE members include a range of state, county, and township officers. PERS-LE members with sufficient qualifying service may retire earlier than other PERS members and will receive benefits calculated under a different benefit formula. Employer and employee contribution rates are higher for PERS-LE members than for other PERS members.

²³⁴ The state retirement boards are as follows: (1) Public Employees Retirement Board, (2) Board of Trustees of the Ohio Police and Fire Pension Fund, (3) School Employees Retirement Board, (4) State Teachers Retirement Board, and (5) State Highway Patrol Retirement Board.

continuing law if a member of a state retirement board breaches the member's fiduciary duty to the retirement system, the Attorney General may maintain a civil action against the board member for harm resulting from that breach. The act states that notwithstanding the designation of the Attorney General as legal advisor for each of the state retirement boards, after being informed of an allegation that the entire board has breached its fiduciary duty, the state retirement board may retain independent legal counsel, including legal counsel provided by the board's fiduciary insurance carrier, to advise the board and to represent the board.

STATE BOARD OF SANITARIAN REGISTRATION

- Requires the State Board of Sanitarian Registration to "provide" to registered sanitarians, rather than to mail, a list of approved continuing education courses.
- Increases fees the Board charges for applications, renewals, and late fees for registration of sanitarians and sanitarians-in-training.

Notification of sanitarian continuing education courses

(R.C. 4736.11; Section 612.09)

Continuing law modified by the act requires that at least once annually the State Board of Sanitarian Registration mail each registered sanitarian a list of approved continuing education courses and upon an individual's request, mail updates of the list to the requestor. The act instead requires the Board to "provide" a list annually, therefore allowing the Board to use electronic means of communication. The act also requires the Board to supply a list of "applicable" courses approved by the Board upon request.

Under the act, these changes to the Board's notification for continuing education take effect October 1, 2005.

Sanitarian fees

(R.C. 4736.12)

The act increases the fees the State Board of Sanitarian Registration must charge as follows:

- (1) For application as a sanitarian-in-training, from \$75 to \$80;
- (2) For registration as a sanitarian by a sanitarian-in-training, from \$75 to \$80;
- (3) For registration as a sanitarian by any other person, from \$150 to \$160;
- (4) For renewal fees for registered sanitarians and sanitarians-in-training, from \$69 to \$74;
- (5) For late applications for renewal, from \$25 to \$27.

OHIO STATE SCHOOL FOR THE BLIND/ SCHOOL FOR THE DEAF

- Allows the State School for the Blind and the State School for the Deaf to administer moneys donated or granted by federal or third parties for use in the education of students who are blind and visually-impaired or deaf and hearing-impaired.
- Creates a Student Account Fund for both the State School for the Blind and the State School for the Deaf as custodial funds for students' personal accounts.
- Creates the Educational Program Expenses Fund for the State School for the Deaf to collect moneys raised, given, or otherwise designated for its use to be disbursed in school and student activities.
- Creates the Student Activity and Work-Study Fund for the State School for the Blind to receive donations and other moneys for use in school operating expenses, student activities, and scholarships.

Administration of donations and federal funds

(R.C. 3325.10 and 3325.15)

Under ongoing law, the State School for the Deaf and the State School for the Blind are under the control and supervision of the State Board of Education and, therefore, apparently do not have legal authority to autonomously receive money from outside parties or the federal government (R.C. 3325.01, not in the



act). The act authorizes the School for the Blind and the School for the Deaf to receive and administer any gifts, donations, or bequests relating to the education of blind and visually-impaired students or deaf and hearing-impaired students, respectively.

The act also authorizes the School for the Blind and the School for the Deaf to receive and administer any federal funds as they relate to the education of blind or visually-impaired students or deaf and hearing-impaired students, respectively. Generally, federal funds for schools are passed through the Department of Education. However, this provision appears to allow for direct application for and administration of federal funds by the two schools.²³⁵

Custodial funds for students

(R.C. 3325.12 and 3325.17)

The act establishes a custodial fund (in the custody of the Treasurer of State, but not part of the state treasury) that must consist of any money received from parents or guardians of students at the School for the Blind that is designated for the students to use in activities of their choice. Likewise, a similar fund is established for the students at the School for the Deaf. The act directs the Treasurer of State to disburse money from the funds for the students on order of the superintendents of the schools or their designees.

The Treasurer of State may invest any portion of the funds not needed for immediate use, subject to the laws governing investment of state funds. Any investment earnings must be credited back to the funds and allocated among the student accounts in proportion to the amount invested from each student's account.

State School for the Deaf Educational Program Expenses Fund

(R.C. 3325.16)

The act creates within the state treasury the Educational Program Expenses Fund for the State School for the Deaf to hold moneys received by the School from donations, bequests, student fundraising activities, fees charged for camps

²³⁵ According to the Office of Budget and Management, the School for the Deaf accepts two major federal grants. The first is the Virtual Reality Education for Assisted Learning grant, which uses innovative technology to help the disabled, including allowing students at the School for the Deaf to interact with students at other schools with similar technology. The grant has a \$1 million appropriation for fiscal years 2006 and 2007 each. The second grant, \$250,000 per year, funds the preschool for both hearing and hearing-impaired children that is operated by the School for the Deaf.

and workshops, gate receipts from athletic contests, and the Student Work Experience Program operated by the School.²³⁶ Any other money designated for deposit in the fund by the Superintendent of the School for the Deaf must also be credited to the fund. Under continuing law, the State School for the Deaf is under the control and supervision of the State Board of Education (R.C. 3325.01, not in the act). Notwithstanding that statute, the act specifies that the State Board's approval is not required to designate money for deposit into the fund.

The State School for the Deaf must use money in the fund for educational programs, after-school activities, and expenses associated with student activities and clubs.

State School for the Blind Student Activity and Work-Study Fund

(R.C. 3325.11)

The act creates within the state treasury the Student Activity and Work-Study Fund for the State School for the Blind to hold moneys received by the School from donations, bequests, and the school vocational program.²³⁷ Any other money designated for deposit in the fund by the Superintendent of the School for the Blind must also be credited to the fund. Under ongoing law, the State School for the Blind is under the control and supervision of the State Board of Education (R.C. 3325.01, not in the act). Notwithstanding that statute, the act specifies that the State Board's approval is not required to designate money for deposit into the fund.

The State School for the Blind must use money in the fund for school operating expenses, including personal services (salaries), maintenance, and equipment related to student support, activities, and vocational programs, and for providing scholarships to students for further training upon graduation.

²³⁶ According to the Office of Budget and Management, the Student Work Experience Program is a catering business run by the students that generates approximately \$2,500 per year. Donations generally amount to between \$4,000 and \$5,000 per year.

²³⁷ According to the Office of Budget and Management, the vocational program generated approximately \$5,300 for fiscal year 2005. Donation totals generally lie between \$4,500 and \$8,000 for any given year.

SCHOOL FACILITIES COMMISSION

- Provides supplemental payments to relatively low-wealth school districts participating in the Classroom Facilities Assistance Program in order to equalize the amount they raise from their maintenance levies with the statewide average.
- Requires excess balances in the School District Property Tax Replacement Fund to be devoted to making those payments.
- Transfers responsibility for a program that provides school districts with interest-free loans for vocational classroom facilities from the State Board of Education to the Ohio School Facilities Commission.
- Excludes school districts that have received state facilities assistance, or are expected to receive such assistance within three fiscal years, from eligibility for the loan program, unless the loan is for equipment not covered by the Commission's programs.
- Authorizes the Director of Budget and Management to transfer investment earnings of the Education Facilities Trust Fund to the Ohio School Facilities Commission Fund to pay operating expenses of the Commission.
- Requires that, when a facility funded by the Ohio School Facilities Commission is proposed to be located on or within one mile of a state route or U.S. highway, the Commission must submit the project plans to the Director of Transportation for review and consider the Director's findings prior to approving the plans.

Background

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in the acquisition of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. The poorest districts are served first and receive a

greater amount of state assistance than wealthier districts will receive when it is their turn to be served. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs have been established to address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides low-wealth districts and "large land area" districts with funding in advance of their district-wide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their district-wide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows Big-Eight school districts that are not yet eligible for assistance under CFAP to receive that assistance earlier than otherwise permitted.²³⁸

Equalization of maintenance levies

(R.C. 3318.18, 5727.84, and 5727.85)

The act provides for an annual supplemental payment, beginning in fiscal year 2007, to relatively low-wealth city, local, and exempted village school districts participating in the Classroom Facilities Assistance Program in order to equalize the amount they raise from the requisite half-mill maintenance levy.

Under continuing law, school districts receiving state school building assistance are required, as a condition of receiving the assistance, to raise money locally to maintain the facilities constructed with state assistance. Generally, the money must be raised by levying a one-half-mill property tax (equal to 0.05%, or \$1 for every \$2,000 in taxable value) for at least 23 years, but certain other forms of school district property tax, or a school district income tax, may apply toward the maintenance levy requirement (so long as the purpose of the applied levy is not inconsistent with paying maintenance expenses). The maintenance levy is in addition to, and separate from, each school district's local contribution to the construction costs of the building project.

The effect of the new supplemental payment is to allow each school district that, at the time it enters into a project agreement, ranks below the statewide average in terms of property valuation per pupil to have as much maintenance money for its project as the average school district in the state. Specifically, the supplemental payment equals the district's enrollment (formula ADM for October)

²³⁸ See R.C. Chapter 3318.

times one-half mill multiplied by the difference between (1) the average per-pupil valuation throughout the state and (2) the district's per-pupil valuation. That is, the payment provides the difference between what one-half mill raises per pupil in the district and what it would raise against the statewide average per-pupil valuation.

The amount of each district's payment is determined at a single point in time, when the district comes up to the top of the ranking and enters into its project agreement with the School Facilities Commission. From that time forward until the 23-year maintenance levy requirement expires, no update of a district's relative valuation per pupil is made, so the amount of the annual supplemental payment does not change even if the district's relative valuation per pupil or its enrollment increases or decreases.

The equalization payment also is available for school districts that have entered into a project agreement before July 2006 if their per-pupil valuation is below the state average. In their cases, the computation is based on district valuation per pupil and the statewide average as of September 1, 2006 and formula ADM for October 2005.

The Department of Education must compute the statewide average valuation per pupil and each school district's valuation per pupil by July 1, 2006, and provide them to the School Facilities Commission. Then, by July 1 of each year beginning in 2007, the Department must compute the statewide average valuation per pupil and the valuation per pupil of each school district that has not entered into a project agreement and provide the resulting figures to the School Facilities Commission. The Commission must use those computations to determine eligibility for the equalization payments and the amount of those payments. Computations do not have to be made for school districts that opt to delay levying the maintenance tax under an Expedited Local Partnership Program agreement until the district comes up to the top of the assistance rankings and thereby becomes eligible to receive building assistance.

Equalization payments are to be made in the fourth quarter of each fiscal year until a district's maintenance levy requirement expires. Districts must credit the payments to their Classroom Facilities Maintenance Fund and use the money only to pay for maintaining SFC-assisted facilities.

The payments are to be financed through transfers of surplus funds from the School District Property Tax Replacement Fund, which holds kilowatt-hour tax revenues allocated for payments to compensate school districts for the loss of property tax revenue due to electric deregulation. On June 1 of each year, the Director of Budget and Management, after making the replacement payments to school districts, must transfer any remaining funds to a newly created "Half-Mill Equalization Fund." Under prior law, surpluses in the replacement fund were



distributed on a per-pupil basis among all school districts, including joint vocational school districts, and spent for capital improvements.

The new half-mill equalization payments must be made from the money in the new Half-Mill Equalization Fund. If the money transferred to the new fund is insufficient to make all of the equalization payments, the Department of Education must certify the amount of the deficiency, and the Director of Budget and Management must transfer an additional amount equal to the deficiency, from the property tax replacement fund. However, if there is a surplus balance in the new equalization fund after all equalization payments have been made, the School Facilities Commission may request that the Controlling Board transfer a "reasonable amount" of the surplus to the Public School Building Fund for classroom facilities projects. Interest accruing in the equalization fund is to remain to the credit of the fund.

Career-technical school building assistance loan program

(R.C. 3318.47, 3318.48, and 3318.49; Section 315.06)

Under a program authorized since 1994, the state may make interest-free loans to school districts to help finance the construction, renovation, or purchase of vocational classroom facilities or the purchase of vocational education equipment. These loans are paid from the Vocational School Building Assistance Fund. Districts must meet eligibility criteria, including demonstrated financial need and the ability to repay the loan within 15 years (or five years for loans for equipment purchases). If the district fails to repay the loan, the state may deduct the overdue payments from the district's state aid.

The act transfers responsibility for the loan program from the State Board of Education to the Ohio School Facilities Commission. It also places two new restrictions on eligibility for the loans. First, it generally limits eligibility for a loan to school districts that, on the date of application, have not previously received state assistance under one of the Commission's programs and are not reasonably expected to receive such assistance within three fiscal years. The only exception is for districts applying for a loan solely to purchase vocational education equipment that is not an approved project cost under the Commission's programs. Second, a district must agree to comply with all applicable design specifications and policies of the Commission in the construction, renovation, or purchase of facilities or equipment paid for with the loan, unless the Commission waives this requirement. If a school district participating in the Expedited Local Partnership Program receives a loan, it cannot apply that loan toward the local resources the district spends prior to receiving assistance under CFAP.

The act requires the Commission to operate the loan program in the same manner as under prior law. Upon the request of the Executive Director of the Commission, the State Board of Education must withhold state funds from a school district that misses a loan payment. The State Board must transfer the amount of the missed payment to the Commission within ten days after the request. The act also changes the name of the fund from which the loans are paid to the Career-Technical School Building Assistance Fund.

To facilitate the transfer of the loan program to the School Facilities Commission, the Commission must develop and approve a transition plan in consultation with the Department of Education. All materials, assets, liabilities, and records of the Department necessary to implement the loan program must be turned over to the Commission along with all current and pending loans and appropriations, encumbrances, and funds associated with the program. These transfers must occur by October 28, 2005. The Department of Education must continue to administer the loan program until the earlier of that date or the date on which the Commission approves the transition plan. Finally, the Department must provide the Commission with any administrative assistance it requires during the transition period.

Investment earnings of Education Facilities Trust Fund

(R.C. 3318.33)

The act authorizes the Director of Budget and Management to transfer investment earnings of the Education Facilities Trust Fund to the Ohio School Facilities Commission Fund. (The Education Facilities Trust Fund receives the portion of the tobacco master settlement agreement that is used to pay the state's share of the construction, renovation, or repair of elementary and secondary schools.²³⁹)

Background

Under continuing law, the operational expenses of the Ohio School Facilities Commission are paid from the Ohio School Facilities Commission Fund. Moneys in the fund may be used for (1) personnel and administrative expenses, (2) evaluations of classroom facilities, (3) preparation of building design specifications, (4) project management services, and (5) other purposes necessary for the Commission to carry out its duties. Continuing law already authorized the Director of Budget and Management to transfer investment earnings of the Public School Building Fund, which is used to implement classroom facilities projects,

²³⁹ See R.C. 183.02(F) and 183.26, not in the act.

and the School Building Program Assistance Fund, which covers the state share of facilities projects, to the Ohio School Facilities Commission Fund.

Project plan submission to ODOT

(R.C. 3318.091)

The act requires that when project plans submitted to the Ohio School Facilities Commission for its approval propose to locate a school facility on, or within one mile of, a state route or a United States highway, the Commission must submit the plans to the Director of Transportation. The Director must review the plans to determine (1) the feasibility of the proposed ingress and egress to the facility, (2) the traffic circulation pattern on roadways around the facility, and (3) any improvements that would be necessary to conform the roadways to standards adopted by the Department of Transportation or state or federal law. The Director must provide a written summary of the findings to the Commission, which must consider the findings in deciding whether to approve the plans.

SECRETARY OF STATE

- Requires notary publics to provide the Secretary of State with notice of (1) any changes to a notary's name or address and (2) the effective date of a notary's resignation of commission.
- Makes a conforming change in the law that moved responsibility for the appointment and commission of railroad company and hospital police officers from the Governor to the Secretary of State.
- Prohibits a person from being a candidate for federal office and a state or county office at the same election.
- Specifies that a person who seeks nomination or election to a federal office and a state or county office at the same election must be disqualified as a candidate for each office that is not a federal office.



Notary public name or address change and resignation

(R.C. 147.05, 147.10, 147.11, 147.12, and 147.371)

Continuing law provides for the registration of notary publics with the Secretary of State, fees for obtaining a commission or a duplicate commission in the event of loss, a prohibition against acting after a commission has expired and a penalty, and a statement about the effect of an official act done after a commission has expired. The act requires that a properly commissioned notary public notify the Secretary of State and the appropriate clerk of courts within 30 days after legally changing the notary's name or address on a form prescribed by the Secretary of State. The Secretary of State then must issue a duplicate commission as a notary public after receipt of the properly completed, prescribed name change form and a fee of \$2.

Under the act, a notary, other than an attorney, who resigns a notary public commission must deliver to the Secretary of State, on a form prescribed by the Secretary of State, a written notice indicating the effective date of resignation. The act prohibits a notary public from performing notary acts knowing that the notary has resigned a commission, and specifies a penalty fine of up to \$500 for a violation. However, the act also specifies that any official act done by a notary public after the notary resigns is valid as if done during the notary public's term of office.

Commissions for special police officers

(R.C. 4973.171)

Under continuing law, as amended by Am. Sub. H.B. 95 of the 125th General Assembly, the Secretary of State is authorized to appoint and commission police officers for banks and building and loan associations, railroad companies, certain companies under contract with the United States Atomic Energy Commission, and hospitals. Prior to Am. Sub. H.B. 95, the Governor was responsible for these appointments. (R.C. 4973.17, *not in the act.*)

Prior law prohibited a person from being appointed or commissioned as a railroad or hospital police officer if the person had been convicted of or pled guilty to a felony after January 1, 1997. However, this former provision stated that the Governor (instead of the Secretary of State) was the officer responsible for ensuring that a felon was not appointed or commissioned as a railroad or hospital police officer. The act conforms the provision to the previous statutory change that moved responsibility for the appointment and commission of railroad company and hospital police officers from the Governor to the Secretary of State,

so that the Secretary of State is responsible for ensuring that a felon is not appointed or commissioned as a railroad or hospital police officer.

Prohibitions on duplicate candidacy

(R.C. 3513.04, 3513.041, 3513.05, 3513.052, 3513.257, 3513.259, and 3513.261)

Nomination or election to a federal office and a state or county office

Under continuing law, a person is prohibited from seeking nomination or election to any of the following offices or positions at the same election:

- Two or more state offices;
- Two or more county offices;
- A state office and a county office;
- Any combination of two or more municipal or township offices, positions as a member of a city, local, or exempted village board of education, or positions as a member of a governing board of an educational service center.

The act expands the prohibition against seeking nomination or election to two or more offices or positions at the same election. Under the act, a person also is prohibited from seeking nomination or election to a federal office and a state or county office at the same election.

If it is determined that a person is seeking nomination or election to a federal office and a state or county office at the same election, the act specifies the manner in which that person will be disqualified from being a candidate for one or more of those offices. The Secretary of State or a board of elections must not accept for filing a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition of a person, if that person, for the same election, has already done any of the following to seek nomination or election for a prohibited office:

- Filed a declaration of candidacy;
- Filed a declaration of intent to be a write-in candidate;
- Filed a nominating petition;
- Become a candidate by receiving a party's nomination at a primary election;



- Become a candidate through the filling of a vacancy caused by the death or withdrawal of a candidate.

Disqualification from the ballot before the primary election

If the Secretary of State determines, before the day of the primary election, that a person is seeking nomination to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking nomination is wholly within a single county, the Secretary of State must notify the board of elections of that county. The board then must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order.

If a board of elections determines, before the day of the primary election, that a person is seeking nomination to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking nomination is wholly within a single county, the board must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If one or more of the offices for which the person is seeking nomination is a state office and any of the offices for which the person is seeking nomination is a federal office, the board must notify the Secretary of State. The Secretary of State then must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order.

Disqualification from the ballot before the general election

If the Secretary of State determines, after the day of the primary election and before the day of the general election, that a person is seeking election to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking election is wholly within a single county, the Secretary of State must notify the board of elections of that county. The board then must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office

that is not a federal office. If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is seeking election is a federal office, the Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office that is not a federal office.

If a board of elections determines, after the day of the primary election and before the day of the general election, that a person is seeking election to a federal office and another prohibited office at that election, and if each office or the district for each office for which the person is seeking election is wholly within that county, the board must vote promptly to disqualify that person as a candidate for each office that is not a federal office. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office that is not a federal office. If one or more of the offices for which the person is seeking election is a state office and any of the offices for which the person is seeking election is a federal office, the board must notify the Secretary of State. The Secretary of State must order the board of elections of each county in which the person is seeking to appear on the ballot to disqualify that person as a candidate for each office that is not a federal office. Each board of elections so notified must vote promptly to disqualify the person as a candidate in accordance with the Secretary of State's order. If the person sought nomination at a primary election and has not yet been issued a certificate of nomination, the board must not issue that certificate for that person for any office that is not a federal office.

BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

- Requires an individual who applies for an audiologist license on or after January 1, 2006, to have a doctor of audiology degree or the equivalent as determined by the Board of Speech-Language Pathology and Audiology.
- Permits an audiologist initially licensed or certified in another state before January 1, 2008, to obtain an audiologist license in this state even



though the audiologist has a master's degree in audiology rather than a doctor of audiology degree.

- Eliminates a provision of law regarding the renewal of a speech-language pathologist or audiologist license via exemption.

Licensure of audiologists

(R.C. 4753.03, 4753.06, 4753.071, 4753.08, and 4753.09)

The act makes several changes to the licensure law for audiologists. First, starting January 1, 2006, the act requires individuals seeking licensure as an audiologist to have obtained a doctor of audiology degree instead of a master's degree in audiology. Second, the act permits an audiologist initially licensed or certified in another state prior to January 1, 2008, to obtain an audiologist license in this state even if the individual has only a master's degree in audiology. Finally, the act eliminates a provision of prior law regarding the renewal of a speech-language pathologist or audiologist license via exemption.

Licensure requirements

Under prior law, an individual was eligible for a license to practice audiology if the individual held, at a minimum, a master's degree in audiology. As of January 1, 2006, the act requires an individual seeking licensure as an audiologist to obtain a doctor of audiology degree before the license can be issued.²⁴⁰

The act also requires any individual who has a master's degree in audiology but not a doctor of audiology degree who applies for licensure as an audiologist before January 1, 2006 to prove that the individual meets certain levels of professional experience determined by rule. In order for the applicant to begin to obtain professional experience, the applicant must first obtain sufficient supervised

²⁴⁰ *The doctor of audiology degree must be from an audiology program accredited by an organization recognized by the U.S. Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the Board of Speech-Language Pathology and Audiology.*

clinical experience as determined by the Board of Speech-Language Pathology and Audiology and pass the licensure examination administered by the Board.²⁴¹

Licensure for individuals previously licensed in another state

Under law retained by the act, the Board is required to waive the examination, educational, and professional experience requirements for any applicant for an audiology license who presents proof of current certification or licensure in good standing in a state that has standards at least equal to the standards for licensure in effect in Ohio. This procedure is referred to as licensure by exemption. Under the act, an applicant from another state can also obtain a licensure by exemption if the applicant meets both of the following:

(1) The applicant is currently certified or licensed in a state that has standards at least equal to the standards for licensure as an audiologist in Ohio that were in effect on December 31, 2005 and that certification or license is in good standing;

(2) The applicant obtained that certification or licensure not later than December 31, 2007.

Removal of license renewal provision

The act removes a provision of law setting the requirements for license renewal for individuals initially licensed by exemption. Under former law, a license could not be renewed six years after the initial date of licensure for a person who obtained the license by exemption unless that person presented proof of the following:

(1) Completion of a bachelor's degree with a major in audiology or speech-pathology with at least 18 hours of courses related to the major;

(2) Completion of at least 150 hours of appropriately supervised clinical experience in audiology or speech-pathology.

²⁴¹ *The clinical experience has to have been obtained in an accredited college or university, a cooperating program of a college or university, or another program approved by the board.*

DEPARTMENT OF TAXATION

I. Commercial Activity Tax

- Imposes a new business privilege tax on the basis of the annual gross receipts of all forms of business organization having taxable gross receipts in excess of \$150,000, other than financial institutions, dealers in intangibles, insurance companies, affiliates of the foregoing, and public utilities.
- When fully phased in, the annual tax equals \$150 on taxable gross receipts up to \$1 million, plus 0.26% of taxable gross receipts in excess of \$1 million, with the percentage subject to upward or downward adjustment if revenue departs from specified revenue targets by more than 10%.
- Devotes revenue to the state General Revenue Fund and, for the first 13 years, to reimburse school districts and other local taxing units for the exemption and phase-out of taxes on all business tangible personal property and telecommunications tangible personal property.

II. Corporation Franchise Tax

- Phases out the corporation franchise tax over five years for all corporations other than financial institutions, financial-related holding companies, and their affiliates.
- Authorizes corporations that become subject to the commercial activity tax to offset some of the financial losses resulting from the loss of future net operating loss deductions and other deferred tax assets in the computation of the franchise tax.
- Clarifies the corporation franchise tax treatment of LLCs and other associations treated as corporations under federal tax law.
- Provides for a final series of payments to the Recycling and Litter Prevention Fund during fiscal year 2006 equal to \$1.5 million from the General Revenue Fund and specifies that future litter taxes paid by corporations be used to fund recycling and litter prevention but not through the Recycling and Litter Prevention Fund.

- Limits the availability of the corporation franchise and personal income tax credits for purchases and installations of new manufacturing machinery and equipment to machinery and equipment purchased no later than June 30, 2005, and installed no later than June 30, 2006.
- Converts the existing tax credit program for purchases and installations of new manufacturing machinery and equipment into a grant program administered by the Department of Development.
- Permits telephone companies to claim the full amount of the tax credit for providing telephone service programs to aid the communicatively impaired during transition to the corporation franchise tax in tax year 2005.

III. Personal Income Tax

- Reduces personal income tax dollar amounts and rates by 21% over five years, beginning in 2005.
- Delays yearly inflationary adjustments to the income tax bracket dollar amounts until 2010.
- Eliminates the existing personal income tax deduction for tuition and fees paid to postsecondary educational institutions located in Ohio.
- Creates a nonrefundable personal income tax credit for taxpayers having adjusted gross incomes (less exemptions) of \$10,000 or less.
- Allows taxpayers to donate a portion of their income tax refunds to military personnel injured in Operation Iraqi Freedom or Operation Enduring Freedom.
- Makes taxation of trust income, which is currently scheduled to end with taxable years of a trust beginning in 2004, permanent.
- Modifies the definition of a "qualifying investment pass-through entity" as used in determining the taxable income of certain trusts.
- Would have permitted a trust that was created before the Ohio income tax was enacted and the pass-through entities in which such a trust owns at least a 5% interest to elect to be subject to the commercial activity tax created in the act rather than the personal income tax (VETOED).

- Specifies that the existing income tax credit for Ohio residents who incur out-of-state income tax liabilities is not available to taxpayers who deduct, or are required to deduct, their out-of-state income tax liabilities in computing their income tax bases.
- Specifies that C corporation shareholders are not indirect owners of the corporation's assets for the purpose of computing tax items, including tax items that could increase a nonresident shareholder's nonresident income tax credit by attempting to apply the corporation's apportionment factors to the shareholder's dividends.
- Specifies that the three-year apportionment requirement for nonresidents selling their interests in a pass-through entity applies only to closely held entities and applies even if the entity converts from being a pass-through entity to another organizational form within that three-year period.

IV. Property Taxes and Transfer Fees

- Eliminates the 10% rollback for real property that is intended primarily for use in a business activity.
- Exempts manufacturing equipment never before subject to taxation (other than as inventory) from taxation.
- Accelerates the current phase-down of the taxation of business inventory, compressing it into a four-year phase-out beginning in 2006.
- Phases out the taxation of all other business tangible personal property ("machinery and equipment" and "furniture and fixtures") over four years beginning in 2006.
- Phases out the taxation of tangible personal property of telephone, telegraph, and interexchange telecommunications companies over five years beginning in 2007.
- Reimburses school districts and other local taxing units for some of the revenue reductions caused by the act's exemption and phase-out of business personal property taxation and for the accelerated phase-out of inventory taxation.

- Reimburses county auditors and county treasurers for the reduction in fees derived from property tax collections caused by the phase-out of tangible personal property taxes.
- Reduces the assessment rate on tangible personal property of electric companies, but taxes their patterns, jigs, dies, and drawings.
- Would have authorized a new kind of school district property tax designed to raise enough revenue to offset reductions in state aid caused by increases in a school district's formula "charge-off" computation (VETOED).
- Would have created the Joint Legislative Tax Reform Impact Study Committee to study the effect on school districts and other local taxing units of the property tax phase-out and the commercial activity tax's capacity to replace lost revenues (VETOED).
- Reduces the assessment rate on tangible personal property of electric companies.
- Requires businesses that supply electricity to others as an incidental line of business to report the portion of their electricity supplying-related property in the same manner as public utility electric companies, and to continue paying taxes on that portion of the property even if it otherwise would be subject to the phase-out of taxes on machinery and equipment.
- Provides that county auditors, rather than the Tax Commissioner, must value and assess railroad real property that is not used in railroad operations, beginning in tax year 2006.
- Provides that a public utility property lessor must report and pay the public utility property tax on property leased to certain public utilities and interexchange telecommunications companies, even if the lease is not part of a sale and leaseback arrangement.
- Exempts property used to recover oil and gas from tangible personal property taxation, under certain circumstances.
- Accelerates the phase-out of state reimbursement for the \$10,000 business tangible personal property tax exemption, ending in fiscal year 2009, rather than fiscal year 2012.

- Specifies how new or destroyed property is to be accounted for in the equalization of real property assessments.
- Establishes a procedure to determine how property tax replacement payments are to be made to school districts or joint vocational school districts that merge with or transfer territory to other districts.
- Changes the computation used to determine the amount of money deposited each year in the Property Tax Administration Fund.
- Allows the state, when it acquires property, to pay estimated taxes on the property at the time of acquisition rather than subsequent to the acquisition as in prior law.
- Reduces the rate at which interest accrues on personal property tax late payments and overpayments.
- Removes the sunset provisions that apply to incentive districts (also known as "area-wide TIFs").
- Places conditions on the creation of incentive districts and limits their creation in a municipal corporation, county, or township with a population of more than 25,000 that has exempted more than 25% of its current taxable value as a result of adopting ordinances or resolutions creating incentive districts.
- For a municipal corporation, county, or township with property in an incentive district that it did not propose to create, provides that notice be given to it regarding creation of the incentive district, and requires that compensation be paid to it, of up to 50% of the amount of taxes exempted in the eleventh and subsequent years of a property tax exemption period on the portion of the improvement exempted in excess of 75%.
- Requires that certain special property tax levies be levied on property exempted in an incentive district, regardless of the exemption, and provides that revenues from those levies cannot be used for service payments.

- Specifies that a real property tax exemption granted under the tax increment financing law begins in the tax year specified in the ordinance or resolution granting the exemption.
- Makes other changes to the tax increment financing law.
- Exempts from real property taxation certain buildings and land used by a state university.
- Specifies that a performing arts center used by a charitable or educational institution, the state, or a political subdivision continues to be exempt from taxation after its conveyance to an entity that is not a charitable or educational institution and that is not the state or a political subdivision if the property continues to be used for the performing arts and certain other specified conditions are satisfied.

V. Sales and Use Taxes

- Establishes a permanent sales and use tax rate of 5½%, effective July 1, 2005.
- Maintains the 0.9% discount rate for vendors and sellers until July 1, 2007.
- Revises the sales and use tax law to conform to the Streamlined Sales and Use Tax Agreement by modifying the sourcing requirements for multiple points of use sales, sales of direct mail, and leases or rental of property requiring periodic payments.
- Revises the exemption certificate law to conform to the Agreement, and modifies the statute of limitations for assessing sales or use taxes when an exemption certificate is provided.
- Changes the medical definitions to clarify exemptions in continuing law.
- Adopts the Agreement's definition of "price" and its tax treatment of the price of bundled transactions.
- Revises definitions of various telecommunications services so that they conform to those in the Agreement.

- Establishes a time period for adopting resolutions calling for county permissive sales tax levies levied under R.C. 5739.026.
- Creates a mechanism for returning vendor license fees to counties when the fees are paid to the Tax Commissioner as part of the statewide registration system.
- Establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by common pleas court clerks with applications for certificates of title for motor vehicles, watercraft, and outboard motors.
- Makes sales of investment metal bullion and investment coins subject to sales and use taxes.

VI. Kilowatt-hour and Natural Gas Consumption Taxes

- Eliminates the threshold amounts that trigger the transfer of kilowatt-hour and natural gas consumption tax revenues from the General Revenue Fund to other funds.

VII. Cigarette Taxes

- Increases the existing cigarette excise tax from 27.5 mills (2.75¢) per cigarette to 62.5 mills (6.25¢) per cigarette, effective July 1, 2005.
- Expresses existing prohibitions against possessing or trading unstamped cigarettes in terms of the quantity of cigarettes instead of their wholesale value.
- Specifies who may affix tax stamps and establishes rules governing the shipping of unstamped cigarettes through Ohio.
- Requires cigarette manufacturers and importers to maintain records regarding cigarette sales and purchases, and establishes record keeping requirements that pertain to manufacturers, importers, wholesalers, and dealers.
- Allows for public disclosure of certain records pertaining to cigarette sales and purchases.

- Requires every manufacturer and importer shipping cigarettes into or within Ohio to file a monthly report with the Tax Commissioner.
- Authorizes the Tax Commissioner to inspect facilities and records belonging to cigarette manufacturers, importers, wholesalers, and retailers, and requires that any inspection not conducted during normal business hours be conducted pursuant to a search warrant.
- Requires that cigarette manufacturers and importers obtain a license from the Tax Commissioner before trafficking in cigarettes in Ohio.
- Specifies additional information to be included in applications for licenses to traffic in cigarettes in Ohio.
- Specifies from whom, and to whom, manufacturers, importers, wholesalers, and retailers may buy and sell cigarettes.
- Makes it an offense punishable by a fine up to \$1,000 to transport or cause to be shipped cigarettes to a person other than an "authorized recipient of tobacco products."
- Makes it an offense punishable by a fine of up to \$1,000 to ship cigarettes into Ohio in containers or wrappings that are not plainly marked as containing cigarettes.
- Specifies that if a person cannot reasonably obtain cigarettes at a retail location in Ohio, the person may apply to the Tax Commissioner for a "consent for a consumer shipment."
- Exempts up to \$300 worth of cigarettes per month from the use tax if they are not held for resale.
- Exempts up to \$300 worth of cigarettes per month from the cigarette excise use tax if they are not held for resale.
- Increases the value (wholesale) of untaxed cigarettes that a person may transport within Ohio without the prior consent of the Tax Commissioner, from \$60 to \$300.

VIII. Other Taxation Provisions

- Modifies distributions to local governments from the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund.
- Specifies that the capital investment projects for which a job retention credit may be granted includes project costs paid after December 31, 2006.
- Permits the Tax Credit Authority to continue entering into agreements for job retention tax credits after June 30, 2007, which, under current law, is the date on which the authority to enter into such agreements is scheduled to expire.
- Extends the job creation tax credit to domestic and foreign insurance companies.
- Constructively eliminates the additional estate "sponge" tax and generation-skipping tax provisions by revising references to the Internal Revenue Code in those provisions, so that they generally incorporate any federal estate tax changes that have been made since the last time those provisions were amended.
- Repeals the estate tax deduction for family-owned businesses.
- Would have increased the penalty for late estate tax payments and filings (VETOED).
- Reduces the rate of interest accruing on unpaid estate taxes and overpayments.
- Adopts a general definition of the Internal Revenue Code for purposes of the state estate tax law.
- Authorizes county auditors to use moneys in real estate assessment funds for estate tax enforcement.
- Authorizes the Tax Commissioner to appoint agents to administer real property and manufactured and mobile home taxes and specifies that these agents may be compensated from moneys in county real estate assessment funds.

- Phases-out the grain handling tax by taxable year 2007 and thereafter exempts grain from taxation as personal property.
- Extends the existing tax credit for loans made to the program fund administered by the Venture Capital Authority to qualifying dealers in intangibles and public utilities, and clarifies the amount of refundable and nonrefundable venture capital tax credits that may be claimed by taxpayers for each tax reporting period.
- Revises motor fuel use tax permit and filing requirements.
- Reduces the motor fuel excise tax prompt payment discount and retail shrinkage allowance for reporting periods in fiscal years 2006 and 2007.
- Permits a school district or educational service center that failed to file or failed to file in a timely manner a refund application for the portion of the motor vehicle fuel tax that became effective on July 1, 2003, that the school district or educational service center paid through the purchase of motor fuel on or after that date to file a refund application with the Tax Commissioner during the 60 days following the act's immediate effective date.
- Clarifies the treatment of expenses and losses of a pass-through entity subject to the pass-through entity withholding tax.
- Authorizes the Tax Commissioner to require a social security number, employer identification number, or other identifying information from persons filing documents with the Department of Taxation.
- Permits a school district board when proposing a school district income tax to specify that the tax applies only to an individual's earned income.
- Authorizes a municipal corporation to levy an income tax on the incomes of residents of the municipal corporation with the proceeds of the tax to be shared with an overlapping school district.
- Authorizes convention facilities authorities located in Appalachian counties having populations less than 80,000 to levy a lodging tax at any rate up to 3% and authorizes such counties to issue bonds and notes in anticipation of the proceeds of the tax.



- Authorizes counties having a population of 1.2 million or more to levy a food and beverage tax and a hotel lodging (or bed) tax to pay costs relative to a convention center.
- Requires that the Tax Commissioner administer a temporary tax amnesty program from January 1, 2006, to February 15, 2006, under which taxpayers who voluntarily pay outstanding state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes are not required to pay penalties associated with those outstanding taxes, are excused from having to pay one-half of the interest accruing on the taxes, and are immune from criminal and civil action in connection with the taxes.
- Provides procedures whereby dealers in intangibles may petition for, and receive, review of penalties imposed upon them in connection with their reporting and payment of the dealers in intangibles tax.
- Narrows the definition of who is considered a "dealer in intangibles" for purpose of the tax imposed on dealers in intangibles and requires the Tax Commissioner to adopt a rule clarifying the definition of "dealer in intangibles" for purposes of the dealer in intangibles tax.
- Requires the Tax Commissioner to prepare semiannual reports summarizing tax revenue associated with the travel and tourism industry.

I. Commercial Activity Tax

New business privilege tax

(R.C. 5751.02; Section 557.09)

The act imposes a new tax on businesses and other entities that generate business income, beginning July 1, 2005. The tax, referred to as the "commercial activity tax," is an annual excise tax like the existing corporation franchise tax, but is imposed on the basis of gross receipts instead of net worth or net income. The tax is imposed for the privilege of doing business in Ohio. "Doing business" is defined as engaging in an activity (including illegal activity) conducted for or resulting in gain, profit, or income. The tax is not a transactional tax (such as a sales tax) and is not subject to the federal law limiting the power of states to tax nonresident entities engaged in interstate commerce. That federal law (Public Law No. 86-272) prohibits states from imposing net income (or net income-measured)

taxes on nonresident entities whose only activities in a state are soliciting orders for sales of tangible personal property that are accepted outside the state and shipped from a point outside the state.

The tax is expressly made part of the "price" for purposes of the sales and use taxes, with the effect being that, if a taxpayer under the new tax makes sales subject to the sales and use tax, the price on which the sales or use tax is based is computed without any deduction for the commercial activity tax paid by the taxpayer-seller even if the tax is billed or invoiced or separately stated.

Only the person receiving gross receipts is subject to the commercial activity tax and the tax may not be billed or invoiced to another person. However, the act explicitly permits a person subject to the tax to recover the tax by including it in the price of a good or service. The Governor vetoed a clause that would have permitted a person to recover the tax by combining or separately stating it as an overhead charge or other charge as part of any existing, amended, or future legal contract.

The first tax return and tax payment are due February 10, 2006, based on gross receipts for the six-month period running from July 1 through December 31, 2005.

Persons subject to tax

(R.C. 5751.01(A), (D), and (E))

The tax applies to any legal person with more than \$150,000 in annual taxable gross receipts in Ohio regardless of the person's legal or organizational form (e.g., corporation, partnership, limited liability company, S corporation, sole proprietor, business trust, estate, etc.), but does not apply to "excluded persons" or to the state, its agencies, its instrumentalities, and its political subdivisions. Nonprofit organizations are not subject to the tax.

Persons not subject to the tax

(R.C. 5751.01(E))

To be an "excluded person," and therefore exempted altogether from the commercial activity tax, a legal person must either have annual taxable gross receipts under \$150,000, or be a member of one of the following classes of legal persons:

- Banks and other financial institutions.
- Bank holding companies.



- Financial holding companies.
- Savings and loan holding companies.
- An affiliate of any of the foregoing if the affiliate is majority-owned or controlled by any of the foregoing (directly, or indirectly through other persons), provided the affiliate is engaged in a business considered by the Federal Reserve Board to be financial in nature or incidental thereto.²⁴²
- Insurance companies subject to and paying the insurance company tax.
- Affiliates of such insurance companies if the affiliate is majority-owned or controlled by the insurance company (directly, or indirectly through other persons), so long as the insurance company is authorized to do business in Ohio.
- Any person having the sole purpose of facilitating or servicing a securitization²⁴³ or similar transaction for or by any of the foregoing (including the affiliates).
- Public utilities subject to and paying the public utility excise tax (but see below for combined companies).
- Dealers in intangibles subject to and paying the dealers in intangibles tax.

²⁴² *This includes lending, exchanging, transferring, investing for others, or safeguarding money or securities; insurance; providing financial, investment, or economic advisory services; issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly; underwriting, dealing in, or making a market in securities; and holding an interest in a nonfinancial company through a securities affiliate or insurance company as part of an underwriting, merchant banking, or investment banking activity for the purpose of gaining from appreciation in the nonfinancial company's value, and whereby the financial holding company does not routinely manage or operate the nonfinancial company other than to obtain a return on the investment. However, if a nonfinancial company is held as part of a merchant banking activity, the nonfinancial company is not an excluded person.*

²⁴³ *"Securitization" is defined as the transfer of assets to another person that issues securities backed by the right to receive payment from the asset--e.g., selling loans to a person that packages loans into securities offered in a secondary market.*

In the first six months the tax is in effect, the \$150,000 exclusion applies to a person's taxable gross receipts during all of 2005.

Except for public utilities, dealers in intangibles, insurance companies, and persons with \$150,000 or less in taxable gross receipts, all excluded persons that are C corporations remain subject to the corporation franchise tax levied under R.C. Chapter 5733. on the basis of net income or net worth.

Receipts of combined companies (i.e., companies that are both electric companies and either natural gas or heating companies) are excluded from the commercial activity tax with regard to the company's taxable gross receipts that are directly attributed to an activity that is subject to the public utility excise tax (i.e., nonelectric activities).

Computation of tax

(R.C. 5751.01, 5751.03, 5751.031, 5751.032, 5751.033, and 5751.034; Sections 557.09 and 557.13)

Initial rate. The tax is levied in two parts: on the first \$1 million in annual taxable gross receipts, the tax is \$150; on taxable gross receipts in excess of \$1 million per year, the tax is 0.26% (2.6 mills per dollar) of those taxable gross receipts, at least for the first two and one-half years the tax is imposed. After the first two and one-half years, the 0.26% rate will be reduced if the tax generates revenue in excess of current projections (described below).

Revenue limitation and future rate adjustments

(R.C. 5751.03(D), 5751.031, and 5751.032; Section 557.09)

The act imposes a rate adjustment mechanism on the commercial activity tax that is activated if revenue exceeds or falls short of specified revenue thresholds by more than 10% of the threshold. The tax rate is adjusted upward if there is a revenue shortfall or is adjusted downward if there is excess revenue. If revenue exceeds the specified threshold by more than 10%, the excess above 10% is credited to the Budget Stabilization Fund (BSF) and to a fund that is used to return revenue to commercial activity tax taxpayers through a tax credit.

Specifically, if revenue from the tax exceeds specified thresholds (shown below) for any of three "test" periods by more than 10% of the threshold, the rate is adjusted downward. The adjusted rate equals the rate that would have produced the specified threshold over the test period, minus one-half of the amount by which actual revenue exceeded 110% of the specified threshold. (The subtraction is made because one-half of the excess is returned to taxpayers through a credit mechanism explained below.) One-half of the revenue in excess of 110% of the

threshold is credited to the BSF and one-half is credited to a new "CAT Refund Fund." Money credited to the CAT Refund Fund is returned, through a tax credit, to commercial activity tax taxpayers that fully paid their taxes for the year in which the test period ends. Each taxpayer is entitled to the taxpayer's pro rata share of the excess revenue credited to the CAT Refund Fund based on the taxpayer's tax liability in comparison to the total liability of all taxpayers entitled to the credit.

If revenue falls short of the thresholds for any of the three test periods, the rate is adjusted upward to the rate that would have produced the specified threshold over the test period.

Rate adjustments are to be rounded to the nearest 1/100 of one mill (i.e., 1/1000 of 1%). The rate must be computed by the Tax Commissioner and certified to the Governor and every member of the General Assembly. The adjusted rate is permanent, unless a new adjustment is made for the second or third test period.

The test periods and corresponding revenue thresholds are as follows:

<u>Test period</u>	<u>Revenue limit</u>
July 2005 through June 2007	\$815 million
July 2008 through June 2009	\$1.190 billion
July 2010 through June 2011	\$1.610 billion

The act states the General Assembly's intent to conduct regular reviews of the act's revenue limitations to lower them or to reduce the tax rate or both. A review would be conducted every two years in conjunction with biennial budget deliberations, and any lowering of the revenue limit or tax rate (below those already provided in the act) would be made on the basis of the tax's yield, the condition of the state economy, and any savings from Medicaid reform or other policy initiatives.

Phase-in of tax. In recognition of the new tax being imposed at the same time as the act phases out the corporation franchise tax (as explained elsewhere in this analysis), the act phases in the tax for all taxpayers other than those having annual taxable gross receipts of less than \$1 million (and thus owing only \$150).

The tax becomes effective July 1, 2005. In the first six months of the tax, the tax equals \$75 on the first \$500,000 in taxable gross receipts during that period, plus 0.06% on taxable gross receipts in excess of \$500,000 during that period. (This rate results from multiplying the permanent 0.26% rate by 23%,



which is the initial phase-in percentage--see immediately below, and then rounding to the nearest hundredth per cent.) The return for that semiannual period must be filed not later than February 10, 2006.

In the first quarter of 2006, only 23% of the tax as normally computed is payable; for the four quarters running from April 2006 to April 2007, 40% of the normal tax is due; for the four quarters running from April 2007 to April 2008, 60% of the normal tax is due; for the four quarters running from April 2008 to April 2009, 80% of the normal tax is due; and from April 2009 on, the tax is payable on the basis of the permanent computation of 0.26% (or the adjusted rate, as explained above).

"Taxable gross receipts"

(R.C. 5751.01(F) and (G), 5751.011(C)(2), and 5751.033; Sections 557.09.03, 557.09.06, and 557.09.09)

The tax applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts situated to Ohio under the act's siting provisions. Total gross receipts is defined broadly to include the total amount realized by a person, without deduction for the cost of goods sold or other expenses, that contributes to the production of that person's gross income. It includes the fair market value of any property and any services received and any debt transferred or forgiven as consideration.²⁴⁴ The act specifies certain examples of gross receipts, including:

- Amounts realized from the sale, exchange, or other disposition of property.
- Amounts realized from performing services.
- Amounts realized from rentals, leases, or other use or possession of the taxpayer's property or capital.

Gross receipts are to be calculated using the same accounting method a taxpayer uses for federal income tax purposes. If a cash discount is allowed and is actually taken in a transaction, the discount is deductible from gross receipts. Likewise, the value of returns and similar allowances is deductible. If a taxpayer

²⁴⁴ *The value of property that is brought into Ohio for a taxpayer's own use within one year after it is received outside Ohio by the taxpayer is deemed to be taxable gross receipts unless the Tax Commissioner ascertains that the receiving-outside-and-bringing-into was not intended in whole or in part to avoid the commercial activity tax in whole or in part. (R.C. 5751.013.)*

is owed an uncollectible payment from a transaction that was previously included in taxable gross receipts the taxpayer previously paid tax on, the uncollectible amount is deductible as a bad debt.²⁴⁵ And if an account receivable is sold, the amount realized from the sale is deductible to the extent receipts from the underlying transaction giving rise to the account receivable were included in the taxpayer's gross receipts.

Excluded amounts. The act specifically excludes the following amounts from the calculation of gross receipts:

- Interest income, except interest on credit sales.
- Dividends and distributions from corporations, and distributive or proportionate shares of receipts or income from a pass-through entity.
- Receipts from the sale, exchange, or other disposition of assets for which capital gain treatment is given under the Internal Revenue Code, without regard to the holding period.
- Proceeds attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument.
- The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the taxpayer.
- Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to any of the various pension and deferred compensation plans given favorable federal tax treatment.
- Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to

²⁴⁵ A "bad debt" is a debt that has become worthless or uncollectible between the preceding and current quarterly tax payment periods, has been uncollected for at least six months, and may be deducted under the Internal Revenue Code, or that could be claimed as a bad debt if the taxpayer kept accounts on the accrual basis. "Bad debt" does not include uncollectible amounts on property that remains in the taxpayer's possession until the full purchase price is paid, expenses in attempting to collect an account receivable or for any portion of the debt recovered, and repossessed property.

or for an employer, including fringe benefits and expense reimbursements.

- Proceeds from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock.
- Proceeds on the account of payments from life insurance policies.
- Gifts or charitable contributions, membership dues, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts if excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization, including those proceeds realized with regard to its unrelated business taxable income.
- Damages received as the result of litigation in excess of amounts that, if received without litigation, would be gross receipts.
- Property, money, and other amounts received or acquired by an "agent" on behalf of another in excess of the agent's commission, fee, or other remuneration.²⁴⁶
- Tax refunds and other tax benefit recoveries.
- Pension reversions.
- Contributions to capital.
- Sales and use taxes collected by a vendor (including out of state vendors).
- Federal and state excise taxes on cigarettes and other tobacco products paid by any person who is a member of the various classes

²⁴⁶ *The act defines an "agent" as a person authorized by another person to act on its behalf to undertake a transaction for the other, including a person who receives a fee to sell financial instruments; a person retaining only a commission from a transaction with the other, proceeds from the transaction being remitted to another person; or a person who acts as an agent of the Division of Liquor Control, who issues hunting, fishing, and other Department of Natural Resources-issued licenses and permits, or who is a licensed lottery sales agent. (R.C. 5751.01(P).)*

of dealers, distributors, manufacturers, and sellers of cigarettes or tobacco products.

- Federal and state excise taxes on liquor and other alcoholic beverages paid by any person who is a member of the various classes of permit holders.
- Federal and state excise taxes on gasoline, diesel, or other motor vehicle fuel by a person who is a member of the various classes of motor fuel dealers.
- Receipts realized by a new or used motor vehicle dealer from sales or other transfers to another motor vehicle dealer for the purpose of resale by the purchasing dealer, but only if the sales or other transfers are based on the transferee's need to meet a specific customer's preference for a motor vehicle.
- Receipts received relating to the sale or transmission of electricity through the use of an intermediary regional transmission organization approved by the Federal Energy Regulatory Commission, even if those receipts are from and to the same member of a group that has elected to be a consolidated elected taxpayer (see "*Taxable gross receipts*," above).
- Receipts in connection with loan or credit account management services provided to a financial institution, if the financial institution and the recipient of the receipts are at least 50% owned or controlled, directly or constructively through related interests, by common owners.
- Receipts realized from administering anti-neoplastic drugs and other cancer chemotherapy, biologicals, therapeutic agents, and supportive drugs in a physician's office to patients with cancer.
- From commissions of horse racing permit holders, any amounts that must be paid to or collected by the Tax Commissioner as a tax under the horse racing law and amounts specified under that law that are required to be used as purse money.
- Property, money, and other amounts received by a professional employer organization from a client employer, in excess of the administrative fee charged by the professional employer organization to the client employer.

- Amounts received from the sale of tangible personal property that is delivered into or shipped from a "qualified foreign trade zone area" that includes a "qualified intermodal facility." A "qualified foreign trade zone area" is a warehouse or other place of delivery or shipment that is located within one mile of the nearest boundary of an international airport and that also is located, in whole or in part, within a foreign trade zone. A "qualified intermodal facility" is a transshipment station capable of receiving and shipping freight through rail transportation, highway transportation, and air transportation. A transshipment station is deemed "capable of receiving and shipping freight" after construction of each of the rail, highway, and air transportation components of the facility commences.²⁴⁷
- Funds other than fees or other consideration received or used by a mortgage broker that is not a dealer in intangibles under a first lien "table-funded" or "warehouse-lending" mortgage loan. (Table-funded mortgage loans are those in which a mortgage broker is initially the payee under the loan, but the loan is assigned to a lender upon closing of the loan. Warehouse-lending mortgage loans are those in which the mortgage broker, using funds advanced by a lender, funds a mortgage loan under which the broker is initially the payee, but the broker transfers the loan to the lender or a secondary market investor before the first scheduled loan payment.)

Also excluded from the calculation of gross receipts are any receipts the taxation of which is prohibited by the Ohio Constitution, the United States Constitution, or federal law.

A real estate broker's fees are included in taxable gross receipts only to the extent a taxpayer is acting as a real estate broker and the fees are retained by the broker and not paid to another broker or an associated salesperson.

Receipts from the following sales of motor fuel are exempted until July 1, 2007: (1) sales by a refinery to a terminal if the fuel is intended to be used as motor fuel, (2) sales from a terminal to a motor fuel dealer, unless the fuel is not subject to the motor fuel excise tax, and (3) sales of fuel on which the motor fuel excise tax has been imposed (unless the tax is imposed for the illegal use of the fuel as motor fuel). The Tax Commissioner is authorized to adopt rules to administer the motor fuel exemption, including a method to determine which fuel is intended to be used as a motor fuel. Until March 1, 2007, the Tax

²⁴⁷ This exclusion is contained in an uncodified provision of the act (Section 557.09.09).

Commissioner must accept recommendations and comments on the application of the commercial activity tax to motor fuel sale receipts, including from motor fuel dealers. By that date, the Commissioner must prepare a report summarizing the comments and recommendations and presenting any recommendations the commissioner wants to make, and submit the report to the Senate President, the House Speaker, and both minority caucus party leaders.

Situsing receipts to Ohio. Only gross receipts sitused to Ohio are taxable. The act prescribes specific situsing rules for various kinds of gross receipts. The following kinds of receipts are to be sitused to Ohio as follows:

- Gross rents and royalties from real property located in Ohio.
- Gross rents and royalties from tangible personal property to the extent it is located or used in Ohio.
- Gross receipts from the sale of real property located in Ohio.
- Gross receipts from the sale of tangible personal property if the property is received in Ohio by the purchaser. If the tangible personal property is delivered by common carrier or by other means of transportation, the place where the property is ultimately received after all transportation has been completed is considered the place where the purchaser receives the property, even when the purchaser accepts property in Ohio and then transports the property "directly or by other means" to a location outside Ohio. Direct delivery in Ohio, other than for purposes of transportation, to a person or firm designated by the purchaser is delivery in Ohio, and direct delivery outside Ohio to a person or firm designated by the purchaser is not delivery to the purchaser in Ohio, regardless of where title passes or other conditions of sale.
- Gross receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property to the extent the receipts are based on the amount of use of the property in Ohio. If receipts are based on the right to use property and the payor has the right to use the property in Ohio, receipts are sitused to Ohio to the extent they are based on the right to use the property in Ohio.
- Gross receipts from the sale of transportation services by a common or contract carrier are sitused to Ohio in proportion to the mileage traveled by the carrier during the tax period on roadways, waterways, airways, and railways in Ohio to the mileage traveled by

the carrier during the tax period on roadways, waterways, airways, and railways everywhere. With the Tax Commissioner's prior written approval, a common or contract carrier may use an alternative situsing procedure for transportation services.

- Gross receipts from dividends, interest, mortgage loan interest and fees, the sale of loans, credit card interest and fees, the sale of credit card receivables, credit card issuer's reimbursement fees, merchant discount receipts, mortgage loan servicing fees, and investment asset income (to the extent those receipts are taxable under the CAT) are sitused to Ohio to the extent they would be included in the numerator of a financial institution's apportionment fractions under the franchise tax if the CAT taxpayer were a financial institution subject to the franchise tax.
- Gross receipts from the sale of services not otherwise sitused, and all other gross receipts not otherwise sitused as provided above, are sitused to Ohio in the proportion to the purchaser's benefit in Ohio as compared to the purchaser's benefit everywhere. The physical location where the benefit ultimately is received is "paramount" in determining this proportion.
- Gross receipts from the sale of electricity and electric transmission and distribution services are sitused in the same manner as under the corporation franchise tax (see R.C. 5733.059).

If the foregoing situsing rules do not fairly represent the extent of a taxpayer's activity in Ohio, the taxpayer may request, or the Tax Commissioner may require or permit, alternative situsing rules. A taxpayer must request alternate situsing rules within the time prescribed by the applicable statute of limitations.

The Tax Commissioner may adopt rules providing guidance with regard to the situsing rules, and providing alternative situsing rules for all taxpayers or for a subset of taxpayers in a particular trade or business.

Uncodified law in the act (Section 557.09.03), which the Governor vetoed, stated that it is the intent of the General Assembly that the situsing provisions be applied in a manner that is consistent with and identical to the situsing provisions that apply to the corporation franchise tax, and must be interpreted and applied by the Tax Commissioner in a manner that is consistent with the body of case law addressing the situsing of sales for purposes of the sales factor as determined under the corporation franchise tax law, and in a manner that is consistent with the Tax Commissioner's prior treatment of the sales factor situsing law for taxpayers under the corporation franchise tax law.

Use of revenue

(R.C. 5751.20 to 5751.22)

Revenue from the new commercial activity tax will be for the General Revenue Fund (GRF) and to reimburse school districts and other local taxing units for the phase-out of taxes from business machinery and equipment and for the acceleration in the phase-out of taxes from business inventories. Initially, revenue from the new tax is to be credited to the newly created Commercial Activities Tax Receipts Fund, and thence divided between the GRF and the newly created School District Tangible Property Tax Replacement Fund (SDRF) and Local Government Tangible Property Tax Replacement Fund (LGRF) in specified proportions until the end of fiscal year 2018, as follows:

Division of CAT revenue			
Fiscal Year	GRF	SDRF	LGRF
2006	67.7%	22.6%	9.7%
2007	0%	70.0%	30.0%
2008	0%	70.0%	30.0%
2009	0%	70.0%	30.0%
2010	0%	70.0%	30.0%
2011	0%	70.0%	30.0%
2012	5.3%	70.0%	24.7%
2013	19.4%	70.0%	10.6%
2014	14.1%	70.0%	15.9%
2015	17.6%	70.0%	12.4%
2016	21.1%	70.0%	8.9%
2017	24.6%	70.0%	5.4%
2018	28.1%	70.0%	1.9%
2019 and thereafter	100%	0%	0%

The revenue credited to the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund is to be used, in addition to GRF money, to provide the reimbursement to school districts and other local taxing units for the phase-out of taxes on business personal property and telecommunications property, as explained in another section of this analysis.



Tax credits

(R.C. 122.17, 122.171, 5751.50 to 5751.52, and 5751.98)

The act permits four of the credits that currently apply to the corporation franchise tax and personal income tax to be applied against the new commercial activity tax:

- The refundable jobs creation credit (R.C. 122.17).
- The nonrefundable jobs retention credit (R.C. 122.171).
- The nonrefundable credit for qualified research expenses (R.C. 5733.351).
- The nonrefundable credit for research and development loan payments (R.C. 5733.352).

The credits would apply against the new commercial activity tax for tax reporting periods beginning on or after July 1, 2008. The credits can no longer be claimed against the corporation franchise tax and personal income after that point; however, to the extent the credits have not been fully utilized with respect to those taxes, the credits can be carried forward and used against the commercial activity tax.

If a corporation or other person claims such a credit against the franchise or income tax, the person may not claim the same credit amount against the new tax.

Generally, the same terms and conditions that govern the credits under the corporation franchise tax and personal income tax law also govern the credits under the new tax. One difference, however, is that some taxpayers will pay the new tax on a quarterly basis, and they may apply the credits against quarterly tax payments. However, any applicable limit on carryforward periods or on credit maximums are still on an annual basis, meaning they are not affected by the quarterly payment requirement applicable to some taxpayers.

With respect to the job creation and job retention tax credits, the act specifies that unused portions of those credits automatically convert to commercial activity tax credits in 2008 without any action having to be taken by the Tax Credit Authority, which, under continuing law, administers those credits. A converted job creation or retention credit applies to those calendar years in which end the remaining taxable years for which the credit was originally approved.

Registration and fee

(R.C. 5751.04; Section 557.09(C))

Every legal person subject to the new commercial activity tax must register with the Tax Commissioner by November 15, 2005, or within 30 days after first becoming subject to the tax. The registration must be made on a form prescribed by the Commissioner that includes various items of information about the taxpayer insofar as it is applicable to the taxpayer: the taxpayer's name; the name of the state or country under the laws of which the taxpayer is incorporated; the location of the taxpayer's principal office and, if the taxpayer is a foreign corporation, the location of its principal place of business in Ohio and the name and address of the corporation's officer or agent who is in charge of its business in Ohio; the names of the taxpayer's president, secretary, treasurer, and statutory agent, together with the post office address of each; the kind of business in which the taxpayer is engaged, including applicable business or industry codes; the date the taxpayer's annual accounting period begins; the names of the taxpayer's owners and officers (if the taxpayer is not a corporation or sole proprietor); the taxpayer's federal employer identification number or numbers or, if those numbers are not applicable, the taxpayer's social security number or its equivalent; and all other information the Tax Commissioner requires to administer and enforce the commercial activity tax. If a person ceases to be a taxpayer, the person must notify the tax Commissioner that the person's registration should be cancelled.

A one-time \$15 registration fee is payable if the person registers electronically; if registration is not done electronically, the fee is \$20. The fee is credited toward the first tax payment due. If a person registers after the due date, an additional fee of up to \$100 per month may be charged (up to a maximum of \$1,000), which the Tax Commissioner may abate; the additional fee is not credited against the tax due. Persons that would otherwise be subject to the tax but that begin business after November 30 in any year are exempt from the fee, as are persons that do not surpass the \$150,000 taxable gross receipts threshold as of December 1. Fees may be assessed.

Registration fee collections are credited to the Commercial Activity Tax Administrative Fund, and are used to defray the Commissioner's costs of implementing and administering the tax, including promoting awareness of the tax during its initial implementation.

Consolidation of related taxpayers

(R.C. 5751.01(B), (E)(1), (H), and (I) and 5751.011)

The act permits a group of commonly owned or controlled persons (including the common owner) to elect to file and pay the tax on a consolidated basis in exchange for excluding otherwise taxable gross receipts from transactions with other members of the group. For purposes of the election, common ownership or control means at least an 80% interest, or a 50% interest, as chosen by the group, but each group may apply only one of the percentage-ownership tests. Foreign corporations may be included in a group if they satisfy the group's chosen ownership test, but the group must include either all such foreign corporations or none.

If an entity is one-half owned by a consolidated group and one-half owned by another consolidated group, and each of those groups is formed under the 50% ownership test, the entity is considered to be a member of each group, and each group must include 50% of the entity's taxable gross receipts in the group's gross receipts. But two groups that are not related except through mutual 50% ownership of another entity may not use that 50% ownership to consolidate into one group and thereby exclude receipts from sales between all members of the group.

Excluded persons not subject to the tax may be included in the group, but there is no tax payable on behalf of the excluded members; their inclusion is for the purpose of exempting receipts that taxable persons in the group receive from their dealings with excluded persons under common ownership or control. However, a dealer in intangibles may not be included in a consolidated group unless the dealer is under common ownership and control with a financial institution or insurance company (i.e., is a "qualifying dealer").

Gross receipts related to the sale or transmission of electricity through the use of an intermediary regional transmission organization approved by the Federal Energy Regulatory Commission must be excluded from taxable gross receipts even if the receipts are from and to the same member of the group. Otherwise, taxable gross receipts received from a person who is not a member of a group are not excluded.

Each member of the group remains jointly and severally liable for the tax and associated penalties and interest, and each member is subject to assessment.

Once made, the consolidation election means the group must file as a single taxpayer for at least the next eight consecutive calendar quarters so long as at least two members satisfy the ownership and control criteria. The election rolls over to

the following eight quarters unless, before expiration of the eighth calendar quarter, the group notifies the Tax Commissioner that it is canceling its designation as a consolidated elected taxpayer. If a person is no longer under common ownership or control with the group, the person must report and pay the tax as a separate taxpayer, as part of a combined taxpayer group (see below), or as a member of a different consolidated group that is eligible to file and pay tax on a consolidated basis. If a person is added to the group after the election, the person must be added to the consolidated group for the purpose of paying and reporting the tax on a consolidated basis, and the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of \$150,000 or less does not apply to consolidated taxpayers.

If a consolidation election is in effect for a group, the group must report and pay the tax on the basis of every member's taxable gross receipts, including members that do not have substantial nexus with Ohio. For this purpose, "substantial nexus" means a person satisfies at least one of the following criteria:

- It owns or uses a part or all of its capital in Ohio.
- It holds a certificate of compliance authorizing it to do business in Ohio.
- It has "bright-line presence" in Ohio (explained below).
- It otherwise has nexus with Ohio to the extent that the state may require the person to remit the tax under the United States Constitution.

The act defines "bright-line presence" as any one of the following conditions:

- Having, at any time during the calendar year, property in Ohio with an aggregate value of at least \$50,000. Value equals original cost or, in the case of rented property, eight times the net annual rental charge.
- Having, during the calendar year, payroll in Ohio of at least \$50,000. Payroll includes any amount subject to Ohio income tax withholding, any other compensation paid to an individual under the supervision or control of the person for work done in Ohio, and any amount the person pays for services performed in Ohio.

- Having, during the calendar year, taxable gross receipts in Ohio of at least \$500,000.
- Having in Ohio, at any time during the calendar year, at least 25% of the person's total property, total payroll, or total sales.
- Being domiciled in Ohio as an individual or for corporate, commercial, or other business purposes.

The Tax Commissioner may require one of the members of a consolidated group to undertake the registration and tax payment requirements on behalf of the group. The registration fee is \$20 for each member of the group, up to a maximum per-group fee of \$200. The consolidation election must be made on a form prescribed by the Tax Commissioner, and must be accepted by the Commissioner if the group satisfies the criteria for making such an election.

Combined taxpayers

(R.C. 5751.012)

All persons subject to the new commercial activity tax that have more than 50% of their ownership interests owned or controlled by common owners, but that do not elect to be treated as consolidated elected taxpayers, are treated, together with their common owners, as "combined taxpayers." Like a consolidated elected taxpayer, a combined taxpayer must report and pay the tax as a single taxpayer, and each member of the combined taxpayer is jointly and severally liable for the group's tax and any associated penalty and interest and is individually subject to assessment. A combined taxpayer must register as a group and is subject to the same \$20 per member registration fee as a consolidated elected taxpayer, up to a maximum of \$200. If a person is added to the combined taxpayer, the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of \$150,000 or less does not apply to combined taxpayers. However, unlike members of a consolidated elected taxpayer, members of a combined taxpayer may not exclude receipts arising from transactions between the members.

Tax periods

(R.C. 5751.05 and 5751.051)

The commercial activity tax is computed on the basis of "tax periods," which are either calendar quarters or calendar years for each taxpayer depending on the taxpayer's level of taxable gross receipts. Taxpayers generating annual taxable gross receipts of \$1 million or more are required to pay the tax on a

quarterly basis. Such taxpayers are referred to as "calendar quarter taxpayers." They must report and pay the tax within 40 days after the end of each quarterly period, which correspond with the calendar quarters: January through March, April through June, July through September, and October through December. The fourth-quarter report is considered to be the annual report, and must reflect quarterly underpayments or overpayments for the year. The Tax Commissioner is authorized to approve alternative filing and payment schedules for a taxpayer if the taxpayer shows the need for an alternative. The Tax Commissioner also can adopt alternative filing and payment rules for groups of taxpayers without the taxpayers seeking approval.

Taxpayers having estimated annual taxable gross receipts of less than \$1 million may report and pay the tax on a calendar year basis, but only if the taxpayers make an election to do so. Such taxpayers are referred to as "calendar year taxpayers." The tax report and payment is due within 40 days after the end of the calendar year. Once a calendar year taxpayer's annual taxable gross receipts reach \$1 million, the taxpayer must begin to report and pay on a quarterly basis in the following year, and must continue to do so until the taxpayer again qualifies for annual reporting and payment and receives written approval to do so from the Tax Commissioner.

General administration

(R.C. 5751.04, 5751.05, 5751.051, 5751.06, 5751.07, 5751.08, 5751.081, 5751.09, 5751.10, 5751.11, 5751.12, and 5751.99)

Payments. Tax payments must be made either quarterly or annually, depending on the taxpayer's status as a quarterly taxpayer or annual taxpayer. Calendar quarter taxpayers must make payments electronically and, if the Tax Commissioner requires, file returns electronically. Such taxpayers may be excused from the electronic filing and payment requirement by applying to the Tax Commissioner, who may excuse taxpayers for good cause.

If a quarterly taxpayer incorrectly reports and pays the tax for a quarter and the tax rate for the quarter is levied at a lower rate (which could occur during the five-year phase-in as the tax rate is incrementally increased), the taxpayer must pay the tax on the basis of the tax rate in effect for the proper quarter, rather than the quarter for which the tax is actually reported and paid. However, a quarterly tax report and payment will be considered to be incorrect only if the amount of tax paid and reported is more than 5% more or less than the amount actually due.

Penalties and interest. Penalties are imposed for not filing and paying the tax or for not filing and paying on time. The penalty for late filing and payment is up to \$50 or 10% of the amount due, whichever is greater. A penalty of up to 10%



may be imposed if a quarterly taxpayer underpays the tax by more than 5% for a quarter during which the tax rate is lower than the rate for the quarter for which the tax is actually paid. In the case of underpaid tax, the penalty is up to 15% of the underpayment, including in those cases where payment is made after the taxpayer is notified of the deficiency by the Tax Commissioner. Penalties also may be imposed if taxpayers required to file and pay electronically fail to do so. The penalty is up to 5% of the payment due for the first two occasions, and 10% for subsequent occasions.

A penalty also may be imposed if a taxpayer fails to switch from being a calendar year taxpayer to a calendar quarter taxpayer once the taxpayer's annual taxable gross receipts exceeds \$2 million (giving such taxpayers a \$1 million margin of error). The penalty may be up to 10% of the amount of the tax due on taxable gross receipts over \$2 million. This penalty applies only after 2008.

A penalty is imposed on persons who have been notified of the registration requirement but that fail to register within 60 days. The penalty is up to 35% of the tax found to be due.

Interest accrues against unpaid amounts at the normal statutory rate of 3 percentage points above the current yield on marketable United States government securities having a remaining maturity of three years or less. The interest accrues from the due date to the time the tax is paid or an assessment is issued, whichever occurs first.

The Tax Commissioner is authorized to abate penalties, but not interest, and is authorized to adopt rules governing abatement of penalties.

Refunds. Refunds are available for overpaid, illegal, or erroneously paid taxes. Refunds must be applied for within the four-year statute of limitations on the issuance of assessments. Interest accrues on refund amounts at the same rate as it accrues on underpayments. A taxpayer that, "because of the operation of the taxpayer's business," is not able to exclude the full \$1 million excludable annually from the 0.26% tax on receipts above \$1 million may be issued a refund to obtain the full \$1 million exclusion. A refund may not be issued to any registered taxpayer for the \$150 tax on the first \$1 million in annual receipts unless the taxpayer cancels the registration before February 10 of the current year.

As with other taxes, refunds must be offset for various debts to the state, including unpaid workers compensation premiums, unemployment compensation contributions, unpaid motor vehicle fees, and incorrect medical assistance payments. The debt must be "final," meaning that any time for appealing the debt has expired without an appeal being made.



Anyone who files a fraudulent refund claim is subject to a fine of up to \$1,000 or imprisonment for up to 60 days or both.

Assessments. As with other taxes, the Tax Commissioner may issue assessments for unpaid or unreported commercial activity taxes. The assessment provisions are substantially the same as for other state taxes, except the statute of limitations for issuing an assessment is four years unless fraud or failure to file is involved, in which case there is no time limit. Also, since the commercial activity tax is based on gross receipts, the Tax Commissioner may use sampling in conducting an audit of a taxpayer if the Tax Commissioner has information indicating a tax underpayment. The sampling must be conducted for a representative period of time; the Commissioner must make a good faith effort to agree with the taxpayer on selecting the representative sample, and the sampling method must be one that has been prescribed by administrative rule.

Winding-up obligations. Taxpayers quitting business or selling their business to another person, or disposing in any manner other than in the regular course of business of 75% or more of the business assets, must pay the commercial activity tax and file a return within 15 days afterwards. The purchaser or other successor must withhold enough money from the purchase money to cover the tax obligation until the former owner produces a receipt showing payment of the tax due or a certificate showing no tax is due. The purchaser is liable for any unpaid tax due.

Recordkeeping. The act authorizes the Tax Commissioner to prescribe recordkeeping requirements applicable under the commercial activity tax. The act also requires the Tax Commissioner to make an electronic list available to the public identifying registered taxpayers, as well as persons whose registration has been cancelled within the preceding four years. Information is confidential taxpayer information, except for the listing of registered taxpayers.

Violations. If any person fails to pay the tax, file required returns, or pay any penalty due, the person may be subject to a *quo warranto* action initiated by the state to annul the person's privilege to do business in Ohio. This legal remedy is the same as that authorized to enforce the corporation franchise tax under continuing law.

Criminal penalties

Criminal penalties are imposed for filing a fraudulent refund claim (as described above under "**Refunds**"), and for any other violation, which is punishable by a fine of up to \$500 and imprisonment for up to 30 days.



Challenging legality of tax's application

(R.C. 5751.31)

The act provides for taxpayer appeals directly to the Ohio Supreme Court when the Tax Commissioner issues a final determination in response to a taxpayer's challenge of an assessment and the primary issue raised by the taxpayer is one arising under the act's "bright-line" nexus standard or provisions in the Ohio Constitution governing the General Assembly's power to tax incomes and to levy excise and franchise taxes;²⁴⁸ the manner in which the General Assembly may use moneys derived from motor vehicle license and fuel taxes;²⁴⁹ or the General Assembly's power to tax food for human consumption.²⁵⁰ The appeal must be made within 30 days after issuance of the final determination.

II. Corporation Franchise Tax

Phase-out of corporation franchise tax

(R.C. 5733.01(G))

The act phases out the corporation franchise tax over five years, beginning with tax year 2006, for all corporations other than banks and other financial institutions, and certain kinds of affiliates of financial institutions, insurance companies, and other corporations that are not subject to the commercial activity tax because they are "excluded persons" (these persons are described under the commercial activity tax heading). Excluded persons that are corporations (or associations treated as corporations for federal income tax purposes) will continue to be subject to the franchise tax.

The phase-out begins with tax year 2006, and the tax is eliminated for corporations other than financial institutions and certain other "excluded persons" beginning in 2010. The phase-out is made in even increments over the intervening five years. In 2006, corporations will owe the greater of the minimum tax (which is \$50 or \$1,000, depending on a corporation's employment level and gross receipts)²⁵¹ or 4/5 of the difference between the tax they would otherwise owe

²⁴⁸ Section 3, Article XII Ohio Constitution.

²⁴⁹ Section 5a, Article XII, Ohio Constitution.

²⁵⁰ Section 13, Article XII, Ohio Constitution.

²⁵¹ The \$1,000 minimum tax applies to any corporation having at least 300 employees or worldwide gross receipts of \$5 million or more.

under continuing law and their nonrefundable credits. If a credit carryforward is allowed for a nonrefundable credit that exceeds annual tax liability, the excess is computed before the 4/5 phase-out fraction is applied. If a corporation has refundable credits for the year, or is entitled to the credit for taxes paid on its behalf by a partnership of which it is a partner, the refundable or partnership credit is not included in the calculation.²⁵² Likewise, in 2007, corporations owe the greater of the minimum tax or 3/5 of the difference between the tax they otherwise would owe and the nonrefundable credits and credit carryforwards from a prior year. Refundable credits and the partnership credit are not included in that amount. The fractions decline in 2008 to 2/5 and in 2009 to 1/5, and any refundable credits and the partnership credit are treated in the same fashion in each of those years.

The act adjusts the computation of the withholding tax imposed on pass-through entities with certain corporate owners to reflect the phase-out of the corporation franchise tax. The withholding tax is computed on the basis of the total of the franchise tax liabilities of corporate owners not having a taxable presence in Ohio (other than their ownership of the entity). The computation of the withholding tax reflects the phase-out of the corporation franchise tax, but only for those corporate owners that qualify for the phase-out. If a corporate owner of the entity remains subject to the franchise tax, its share of the withholding tax computation remains as under continuing law, without applying the phase-out fractions.

Credit for unused net operating loss deductions, other deferred tax assets

(R.C. 5751.53 and 5751.98; Section 612.21)

The act permits corporations becoming subject to the commercial activity tax to claim a tax credit offsetting some of the financial statement effects of losing the ability to deduct net operating losses (NOLs) and some other deferred tax items in computing their corporation franchise tax, which is being phased out for most corporations. Under the law in operation before the tax is fully phased out, corporations may deduct NOLs in computing their net incomes and may carry

²⁵² *The partnership credit, known as the "qualifying pass-through entity tax credit," is a credit for taxes paid by a partnership or other pass-through entity on behalf of a corporation that is a partner or owner of a pass-through entity doing business in Ohio, but which itself does not have any taxable business presence in the state. A withholding tax is imposed on the partnership or entity to ensure that the corporation satisfies its franchise tax obligation. The corporation then is credited with the tax paid on its behalf by the entity against the corporation's individual franchise tax obligation.*

forward any excess NOL that is not applied to the current year's net income computation; NOLs may be carried forward for up to 20 years.²⁵³

Under accounting standards that govern accounting for income taxes, a taxpayer's ability to carry forward currently unused NOLs, credits, and other tax items that may reduce future tax liabilities create what are known as deductible temporary differences. The differences arise from differences in tax accounting versus financial accounting for events--such as an operating loss--that affect financial statements in a different time period from when they affect the tax accounts. To the extent these differences under the current tax laws are more likely than not to result in a future reduction in tax liability (e.g., a future deduction of a currently unused NOL), they represent a deferred tax asset on the current balance sheet.²⁵⁴ But if some event occurs that causes the asset to lose value before its value is fully realized--for example, because of a reduction in future tax rates or the disallowance of the deduction because of legislative changes--the loss of value must be recorded on current financial statements when the event occurs, which results in a current net accounting loss.

The act addresses the current financial effects of such losses by permitting some corporations to claim a credit against the commercial activity tax. In effect, the credit represents a new deferred tax asset to offset some of the financial loss resulting from the devaluation of the existing deferred tax asset. The credit is available only for corporations that have a qualifying NOL carryforward, after adjusting for other net temporary differences (see below), that exceeds \$50 million. (In effect, the credit offsets only losses from the disallowance of NOL carryforwards to the extent those losses exceed \$50 million.) If a corporation filed a combined franchise tax report with related corporations for tax year 2005, the \$50 million threshold is divisible among the corporations filing the combined report. The NOL carryforward amount after deducting the \$50 million amount is termed the "disallowed Ohio net operating loss carryforward."

NOL carryforwards qualify for the credit computation only if they are otherwise deductible in franchise tax year 2006 and to the extent they do not exceed the carryforward available from franchise tax year 2005.²⁵⁵ The amount of

²⁵³ *However, the carryforward period is 15 years if the NOL is incurred before August 6, 1997.*

²⁵⁴ *Conversely, temporary differences likely to be realized as a future tax liability--known as taxable temporary differences--represent deferred tax liabilities.*

²⁵⁵ *As reflected in the 2005 franchise tax report or an amended 2005 report filed before July 1, 2006.*

such NOL carryforwards for which the credit may be claimed is the lesser of the following amounts minus \$50 million: (1) the NOL carryforward amount (reflecting apportionment to Ohio) or (2) the NOL carryforward amount the corporation used to compute the corporation's deferred tax asset on its books on the last day of the corporation's taxable year that ended in 2004. This second amount is to be determined net of the valuation allowance account related to the NOL carryforward (which reflects the diminution in the value of the asset on the basis of the corporation's assessment of the likelihood of not realizing the asset).

Other tax items representing deductible temporary differences or taxable temporary differences must be included in the credit computation if they are shown on the corporation's books on the last day of the corporation's taxable year that ended in 2004.²⁵⁶ The act excludes any temporary differences that arise from unused credit carryforwards. The net amount of the deductible and taxable temporary differences (which may be a negative number) must be apportioned under the franchise tax three-factor apportionment formula. The net apportioned amount of these items may not exceed 25% of the NOL carryforward amount that qualifies for the act's credit computation.

The credit amount is computed on the basis of the net amount of the disallowed Ohio NOL carryforward and the other deferred tax assets or liabilities. (This net amount is termed the "amortizable amount.") If the net sum of the other deferred amounts is not less than zero, the amortizable amount equals 8% of the sum of the disallowed Ohio NOL carryforward and the other items. If the net sum of the other deferred items is less than zero, but when expressed as a positive number is less than the disallowed Ohio NOL carryforward, the amortizable amount equals 8% of the difference. If the net sum of the other items is less than zero but when expressed as a positive number exceeds the disallowed Ohio NOL carryforward, the amortizable amount equals zero and there is no credit.

The credit for the amortizable amount is available beginning in 2010, but it is not available all at once. Instead, it is gradually phased in over ten years, with the credit available for 10% of the amortizable amount available in 2010 and ten additional percent available each year until 2019, when the credit becomes available for 100% of the amortizable amount (less previously claimed credit amounts) through 2029. In any year through 2029, the credit may not exceed one-half of a corporation's commercial activity tax liability after deducting any other credits allowed against the commercial activity tax. If the total of the credits taken between 2010 and 2029 is less than the amortizable amount for which the credit

²⁵⁶ *All temporary differences must be computed net of any related valuation allowance account--i.e., net of any adjustments to their values to account for the likelihood the associated deferred tax asset or liability will not be realized.*

could be claimed, a refundable credit is allowed in 2030 for the remaining effects of the unclaimed credit, but the credit may be claimed in 2030 only if the person claiming the credit is a commercial activity tax taxpayer in that year.

If a corporation entitled to the credit is a member of a consolidated elected taxpayer group or combined taxpayer group (both of which file and pay the commercial activity tax as a single taxpayer), the group is entitled to the credit. If a nonrecognition transaction occurs with respect to a corporation entitled to the credit, the amortizable amount, and all amounts contributing to the computation of that amount, must be computed in a manner consistent with the federal computation of net operating losses under such circumstances.

The credit may not be transferred or used as collateral or otherwise assigned to another person. The credit is not subject to attachment, execution, levy, lien, or other judicial proceeding.

If the Tax Commissioner finds that a corporation claims the credit on the basis of an amount that results from a sham transaction, twice the amount in question is to be deducted from the amortizable amount.

All corporations intending to claim the credit must file a report with the Tax Commissioner by June 30, 2006, showing the amortizable amount on the basis of which the corporation (or its consolidated or combined group) intends to claim the credit, and any other information the Tax Commissioner requires. The credit is denied if a corporation fails to provide the report.

The Tax Commissioner may audit the accuracy of a taxpayer's amortizable amount until June 30, 2010 (or later if extended by mutual consent) and adjust the amount or, if appropriate, issue an assessment as necessary to correct any errors.

Some noncorporations treated as corporations

(R.C. 5733.01(E))

The act clarifies that any entity that is taxed as a corporation under federal income tax law (such as some limited liability companies) also is to be treated as a corporation under Ohio's corporation franchise tax law. Although this principle is stated in prior law, the act makes it clear that any equity stake in such an entity (such as a membership interest in such an LLC) is to be treated in the same manner as owning capital stock of a corporation for the purposes of the aspects of the franchise tax law referring to capital stock of corporations.

Recycling and Litter Prevention Fund

(R.C. 5733.065, 5733.066, and 5733.122; Section 557.10)

Continuing law levies a tax on corporations for the privilege of manufacturing or selling "litter stream products" in this state. "Litter stream products" include such things as glass, metal, plastic, and container crowns. These taxes are credited to the Recycling and Litter Prevention Fund and are used to fund recycling and litter prevention.

The act provides for a final series of payments to the Recycling and Litter Prevention Fund during fiscal year 2006 equal to \$1.5 million from the General Revenue Fund. The act specifies, further, that future litter taxes paid by corporations be used to fund recycling and litter prevention but not through the Recycling and Litter Prevention Fund.

Purchase and installation of new manufacturing machinery and equipment

Tax credits not available for purchases made after June 30, 2005

(R.C. 5733.33 and 5747.31 (not in the act))

Continuing law authorizes a tax credit against the corporation franchise and personal income taxes for new manufacturing machinery and equipment purchased and used in Ohio by corporations and other business organizations. Under prior law, the credit applied to purchases made on or before December 31, 2015. To qualify for the credit, a taxpayer was required to install the machinery and equipment in Ohio no later than December 31, 2016. Under continuing law, the credit equals a percentage of a taxpayer's incremental increase in machinery and equipment investment in a county over its existing stock of machinery and equipment during a baseline period. The percentage is 7.5%, except when the machinery or equipment is purchased for use in certain economically depressed areas, in which case the percentage is 13.5%. The credit is claimed over a seven-year period. The credit is nonrefundable, but may be carried forward for three tax years, in the case of the corporation franchise tax, or three taxable years, in the case of the personal income tax. A taxpayer who purchases new manufacturing machinery and equipment and who intends to claim the credit must file a notice of intent to claim the credit with the Department of Development.

The act limits the availability of the credits to machinery and equipment purchased no later than June 30, 2005, and installed no later than June 30, 2006.

The act requires that a taxpayer's notice of intent to claim the credit must be filed with the Department of Development on or before September 30, 2005. If

the taxpayer does not file the notice on or before that date, the taxpayer is precluded from claiming the credit.

The act provides, further, that no credit or credit carry-forward may be claimed with respect to any taxable year ending after June 30, 2005. However, any unclaimed credit or credit carry-forward remaining after June 30, 2005, may be converted to a grant under the grant program described below (see "**Tax credits converted to grants administered by the Department of Development,**" below).²⁵⁷

Tax credits converted to grants administered by the Department of Development

(R.C. 122.172, 122.173, and 5733.33)

The act converts the existing tax credits for purchases and installations of new manufacturing machinery and equipment into grants administered by the Department of Development that can be claimed against corporation franchise and personal income tax liabilities. The grants first apply to taxable years beginning on or after July 1, 2005. Generally, the same eligibility requirements and the same terms and conditions that govern the existing credits also govern the new grants. One difference is the order in which the grant is applied against a tax liability. Taxpayers must apply manufacturing machinery and equipment grants against tax liabilities after allowing for all nonrefundable credits but prior to allowing for refundable credits against those tax liabilities. The Governor vetoed a sentence stating that a taxpayer did not need to be a manufacturer in order to be eligible for a grant.

The act charges the Director of Development with responsibility for administering the grant program. A taxpayer who is eligible for a grant may apply for a grant on a request form developed by the Director in consultation with the Tax Commissioner. The taxpayer must file the request form with the tax return filed for the taxable year in which the grant is claimed. A taxpayer must supply all of the information requested on the grant request form. A grant request form is subject to audit by the Director and the Tax Commissioner.

²⁵⁷ *In Cuno v. DaimlerChrysler, No. 01-3960, 2004 FED App. 0293P (6th Cir. Sept. 2, 2004), the Sixth Circuit Court of Appeals held that the corporation franchise tax credit for purchases and installations of new manufacturing machinery and equipment violates the Federal Constitution's Commerce Clause, U.S. Const. Art. I, §8, cl. 3, which grants Congress the authority to "regulate Commerce with foreign nations, and among the several States." The court held that the credit discriminates against interstate commerce by coercing businesses already subject to Ohio's corporation franchise tax to expand locally rather than out-of-state.*

A grant may not be claimed with respect to any taxable year for which a taxpayer was allowed a manufacturing machinery and equipment tax credit. However, the act provides that if a taxpayer is required to repay any manufacturing and machinery tax credit for a taxable year ending before July 1, 2005, for any reason not specified in the corporation franchise and income tax provisions of the Revised Code, a grant is to be made available to the taxpayer for that taxable year. In addition, any unused tax credit or tax credit-carry forward existing on July 1, 2005, may be converted into a grant.

Telephone company tax credit for providing telephone service programs to aid the communicatively impaired

(R.C. 5733.56, not in the act; Section 557.04)

Under continuing law, beginning in tax year 2005, telephone companies are no longer subject to the public utility excise tax on gross receipts and become subject to the corporation franchise tax. For that tax year (to solve timing issues in moving from one tax to another), telephone companies are required to compute taxes owed and net operating loss carry forward by multiplying the tax owed, net of nonrefundable credits, or the loss for the taxable year, by 50%.

The act specifies that in tax year 2005, telephone companies may claim the full amount of the nonrefundable tax credit for providing telephone service programs to aid the communicatively impaired in accessing a telephone network.

III. Personal Income Tax

Tax rates reduced uniformly by 21%

(R.C. 5747.02(A))

Continuing law establishes nine income tax brackets, each with a corresponding tax dollar amount and tax rate. Under prior law, the income brackets and applicable tax dollar amounts and tax rates for each bracket were as follows:

Taxable income	Tax
\$5,000 or less	.743%
More than \$5,000 but not more than \$10,000	\$37.15 plus 1.486% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$111.45 plus 2.972% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$260.05 plus 3.715% of the amount in excess of \$15,000



Taxable income	Tax
More than \$20,000 but not more than \$40,000	\$445.80 plus 4.457% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,337.20 plus 5.201% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$3,417.60 plus 5.943% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$4,606.20 plus 6.9% of the amount in excess of \$100,000
More than \$200,000	\$11,506.20 plus 7.5% of the amount in excess of \$200,000

The act reduces the rates and amounts within each bracket by a total of 21% over five years, beginning with taxable years beginning in 2005, in nearly even per-year increments. The resulting tax brackets for 2009 and thereafter are as follows:

Taxable income	Tax
\$5,000 or less	.587%
More than \$5,000 but not more than \$10,000	\$29.35 plus 1.174% of the amount in excess of \$5,000
More than \$10,000 but not more than \$15,000	\$88.05 plus 2.348% of the amount in excess of \$10,000
More than \$15,000 but not more than \$20,000	\$205.45 plus 2.935% of the amount in excess of \$15,000
More than \$20,000 but not more than \$40,000	\$352.20 plus 3.521% of the amount in excess of \$20,000
More than \$40,000 but not more than \$80,000	\$1,056.40 plus 4.109% of the amount in excess of \$40,000
More than \$80,000 but not more than \$100,000	\$2,700.00 plus 4.695% of the amount in excess of \$80,000
More than \$100,000 but not more than \$200,000	\$3,639.00 plus 5.451% of the amount in excess of \$100,000
More than \$200,000	\$9,090.00 plus 5.925% of the amount in excess of \$200,000



For each taxable year beginning after 2009, the income tax dollar amounts and rates are the same as for taxable years beginning in 2009.

Inflation adjustments delayed

(R.C. 5747.02(A))

Under prior law, beginning in July 2005, the Tax Commissioner was to make yearly adjustments to each of the existing tax bracket income amounts to account for general price inflation. The act postpones commencement of these yearly adjustments until 2010.

Deduction for qualified tuition and fees eliminated

(R.C. 5747.01(A)(18))

Prior law permitted taxpayers to take a deduction for certain tuition costs and fees paid by them on their own behalf or on behalf of a spouse or dependent during the taxable year. The deduction was available for tuition and fees paid to a state university or other postsecondary institution located in Ohio. For taxpayers enrolled in a full-time course of study, the deduction was available for tuition and fees paid in each of the first two years of postsecondary education. For taxpayers enrolled part-time, the deduction was available for tuition and fees paid for the academic equivalent of the first two years of postsecondary education during a maximum of five taxable years. The total amount of tuition and fees that could be deducted by a taxpayer for all taxable years was \$5,000. The deduction was not available to individuals filing a joint return showing a combined federal adjusted gross income²⁵⁸ greater than \$100,000 and was not available to single filers having federal adjusted gross income in excess of \$50,000.

The act eliminates the deduction for tuition and fees. The act provides that the deduction is not available for any taxable year beginning after December 31, 2005.

²⁵⁸ A taxpayer's Ohio adjusted gross income, which is the income tax base from which Ohio income tax liability is calculated, is calculated on the basis of the taxpayer's federal adjusted gross income (R.C. 5747.01(A)).

Credit for low-income taxpayers created

(R.C. 5747.056, 5747.08, and 5747.98)

The act creates a nonrefundable²⁵⁹ credit for individuals whose Ohio adjusted gross income (less exemptions) does not exceed \$10,000. The amount of the credit varies depending upon the taxable year for which it is claimed, as shown in the following table.

For taxable years beginning in	The credit is
2005	\$107
2006	\$102
2007	\$98
2008	\$93
2009 and thereafter	\$88

Injured military personnel income tax refund contribution system

(R.C. 5101.184, 5101.98, and 5747.113)

Overview

Under continuing law, taxpayers may contribute a portion of their income tax refunds to two environmental protection funds: the Natural Areas and Preserves Fund and the Nongame and Endangered Wildlife Fund. The act establishes the Military Injury Relief Fund in the state treasury as a third fund to which taxpayers may contribute a portion of their income tax refunds. As with the environmental protection funds, taxpayers may indicate their willingness to make a contribution to the Military Injury Relief Fund directly on their income tax returns. Individuals also may contribute directly to the fund in addition to or independently of making a contribution through their income tax returns.

The Director of Job and Family Services administers the Military Injury Relief Fund. Money in the fund is to be used exclusively for making grants to individuals injured while in active service as a member of the United States Armed Forces serving under Operation Iraqi Freedom or Operation Enduring

²⁵⁹ A "nonrefundable" credit is a credit that can be claimed by a taxpayer only to the extent the amount of the credit does not exceed the taxpayer's tax liability. If a nonrefundable credit exceeds a taxpayer's tax liability, the taxpayer is not entitled to a refund of the excess.

Freedom. An individual who receives a grant from the fund is not precluded from receiving additional grants from the fund and is not precluded from being considered for or receiving other forms of assistance offered by the Department of Job and Family Services.

Reporting requirement

Under continuing law, the Director of Natural Resources is required to file reports with the General Assembly appraising the effectiveness of the income tax contribution system as it pertains to the environmental protection funds. The act imposes the same reporting requirement on the Director of Job and Family Services with respect to the Military Injury Relief Fund. Specifically, the act requires that the Director file a report with the General Assembly in January of every odd-numbered year describing the amount of money contributed to the fund in each of the previous five years, the amount of money contributed directly to the fund in addition to or independently of the income tax refund contribution system in each of the previous five years, and the purposes for which money in the fund was expended.

Rulemaking required

The act requires that the Director of Job and Family Services adopt rules necessary to administer the grant program. The act specifically requires that the Director adopt rules establishing all of the following: (1) forms and procedures by which individuals may apply for a grant from the fund, (2) criteria for reviewing, evaluating, and ranking grant applications, and (3) criteria for determining the amount of grants.

Administrative costs

Under prior law, the two environmental protection funds each shared one-half of the administrative costs of the income tax contribution system. The act specifies that the two environmental protection funds and the Military Injury Relief Fund each share one-third of the administrative costs.

Taxation of trust income made permanent

(R.C. 5747.01(A)(6), (I), and (S)(12) and (14) and 5747.02(D))

Under prior law, the income tax applied to trusts for only three taxable years: namely, the taxable years of a trust beginning in 2002, 2003, and 2004. Thus, under prior law, the last year in which trusts were subject to the personal income tax was the taxable year of a trust beginning in 2004. The act makes application of the personal income tax to trusts permanent.

Trust residency rules

(R.C. 5747.01(I)(3)(a)(iii) and (I)(3)(d)(iii))

The residency of a trust determines the extent to which the trust's nonbusiness income is taxable by Ohio. If a trust is not a resident trust, it is entitled to a credit for taxes paid to another state on the nonbusiness income.

Under continuing law, a trust is considered a resident trust to the extent it consists of assets transferred under any of the following three conditions:

(1) With respect to certain testamentary and irrevocable inter vivos trusts, the assets were transferred by a person, a court, or a governmental entity or instrumentality on account of the decedent-transferor's death;

(2) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) at the time of transfer, provided at least one of the trust's beneficiaries is domiciled in Ohio (for Ohio income tax purposes) during some portion of the trust's current taxable year;

(3) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) when the trust became irrevocable, but only if at least one of the trust's beneficiaries was an Ohio resident (for Ohio income tax purposes) during some portion of the trust's taxable year.

The act specifies that, with respect to (3) above, a trust is considered a resident trust if the trust became irrevocable upon the death of a person domiciled in Ohio (for Ohio income tax purposes).

Under continuing law, the extent to which a trust consists of assets transferred to it from any of the sources enumerated in (1), (2), and (3) above is ascertained by multiplying the fair market value of the trust's assets by a "qualifying ratio"²⁶⁰ that is based, generally, on the relationship of the fair market value of the transferred assets at the time of transfer to the fair market value of all of the trust's assets at that time. The act provides that the domicile of a trust's

²⁶⁰ *The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time and the denominator is the fair market value of all of the trust's assets at that time. Each subsequent time the trust receives assets the numerator of the qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer multiplied by the last qualifying ratio computed, and (2) the fair market value of the subsequently transferred assets at the time transferred. The denominator is the fair market value of all of the trust's assets immediately after the subsequent transfer.*

beneficiaries is not to be taken into account in this computation insofar as the sources are as described in (1), (2), or (3) above.

"Qualifying investment pass-through entity"

(R.C. 5747.012)

Trusts are taxed on the basis of "modified taxable income," which is derived from a trust's federal taxable income. To compute modified taxable income, federal taxable income is adjusted by various additions and deductions prescribed by law, and divided into three components: modified business income, modified nonbusiness income, and the qualifying trust amount. The qualifying trust amount is comprised of capital gains and losses from holding debt or equity of a business, government, or other issuer. Modified business income is the business income of a trust minus any business income included in the qualifying trust amount; modified nonbusiness income is any income other than business income and income included in the qualifying trust amount. The division of income into three components is for the purpose of apportioning and allocating the portion of a trust's income that is taxable by Ohio; each component is apportioned or allocated by a different method.

Modified business income is apportioned by the same method used to apportion a corporation's ordinary income under the corporation franchise tax law: that is, in proportion to the value of property, payroll, and sales in Ohio relative to all property, payroll, and sales. Modified nonbusiness income is allocated to Ohio to the extent that the trust's nonbusiness income is produced by trust assets that compose the Ohio resident part of the trust. A trust's qualifying trust amount is apportioned to Ohio on the basis of where the underlying physical assets producing the gain or loss are located.

Under continuing law, certain kinds of investment income of certain kinds of resident trusts are apportioned in the same manner as modified business income (i.e., under the relative property, payroll, and sales formula). Investment income of other trusts is allocated as modified nonbusiness income. To be apportioned as modified business income, the investment income must satisfy certain conditions, one of which is that the income must be attributable to the trust's ownership of a "qualifying investment pass-through entity." A qualifying investment pass-through entity is a partnership or other pass-through entity²⁶¹ that satisfies the following three criteria:

²⁶¹ A pass-through entity is a partnership, limited liability company, S corporation, or other entity that generally is not taxed as an entity; instead, the constituent owners are taxed on their distributive shares of income from the entity.

- (1) It derives at least 40% of its income from loanmaking, investment management, other financial business activities, managing intangible assets, or from ownership of any other partnership or pass-through entity;
- (2) It has at least 40% of its asset value composed of intangible assets; and
- (3) It was formed or organized before June 5, 2002.

The act modifies the third criteria above by specifying that the entity must have been formed or organized "as an entity" prior to June 5, 2002, which suggests that, under the act, an entity would not have to have existed as a pass-through entity on June 5, 2002, to qualify as a qualifying investment pass-through entity, as long as it was an organized entity on that date and is presently a pass-through entity. The act provides, further, that a partnership or pass-through entity is a "qualifying investment pass-through entity" only if it exists as a pass-through entity for all of the taxable year of the trust.

Trust election to be subject to the commercial activity tax

(R.C. 5747.01 and 5751.01)

The Governor vetoed provisions in the act that would have permitted a "pre-income tax trust" to elect to pay the commercial activity tax created in the act in lieu of the personal income tax (see "**Commercial Activity Tax**," above). The act would have defined a "pre-income tax trust" as a trust that was created by a document or instrument that was executed before January 1, 1972, and that became irrevocable upon its creation. To subject itself to the commercial activity tax, a pre-income tax trust would have made a "qualifying pre-income tax trust election," which would have been an election by the trust to be subject to the commercial activity tax and to subject to that tax all pass-through entities in which the trust owns (directly, indirectly, or constructively through related interests by common owners) at least 5% of the ownership or equity interests. The trustee of a trust that wanted to make a qualifying pre-income tax trust election would have had to notify the Tax Commissioner of the election in writing on or before April 15, 2006.

A pre-income tax trust's timely election to be subject to the commercial activity tax would have been effective on and after January 1, 2005. The election would have remained in effect with respect to all tax periods and tax years until the trust's trustee revoked the election.

Credit for a resident's out-of-state income tax liability disallowed if the out-of-state income tax liability is deducted in computing the resident's tax base

(R.C. 5747.05(B)(4))

Continuing law allows a credit against the personal income tax for income taxes paid by an Ohio resident to another state or the District of Columbia. The credit is equal to the lesser of: (1) the amount of income tax otherwise due to Ohio on the portion of Ohio adjusted gross income (which is the tax base from which Ohio income tax liability is calculated) that is subject to taxation by another state or the District of Columbia, or (2) the amount of income tax liability to another state or the District of Columbia on the portion of Ohio adjusted gross income that is subject to taxation by another state or the District of Columbia.

The act provides that the credit for income taxes paid by Ohio residents to other states or the District of Columbia is not available to any taxpayer who has directly or indirectly deducted, or was required to directly or indirectly deduct, the amount of income taxes owed to another state or the District of Columbia in computing federal adjusted gross income. Thus, the act precludes a resident taxpayer from claiming the credit when the taxpayer deducted, or should have deducted, the out-of-state income taxes in computing the taxpayer's federal income tax base. Because Ohio's income tax base is derived from the federal income tax base, the effect of the provision is to preclude a resident taxpayer from taking, for state income tax purposes, a deduction for out-of-state income taxes and also claiming a credit with respect to those taxes.

Meaning of "indirect" ownership

(R.C. 5747.01(EE))

The act specifies the meaning and scope of the term "indirectly" insofar as the term is used in the income tax law in connection with an individual's, estate's, trust's, pass-through entity's, or other legal person's ownership of a corporation. Generally, the act provides that the shareholder of a "C" corporation (or of any association treated as a C corporation for federal income tax purposes) does not, by virtue of being a shareholder, indirectly own the assets of the corporation. The provision appears to have the effect of clarifying that nonresident shareholders may not claim the nonresident credit on the basis of the portion of dividends received from a corporation with Ohio income equal to the portion of the corporation's business income apportioned outside Ohio.

Treatment of income from nonresident's sale of a pass-through entity

(R.C. 5747.212)

The act modifies the income tax treatment of income arising from a nonresident's sale of an interest in a pass-through entity by specifying that prior law's treatment applies only to closely held entities and applies even if the sale involves an interest in an entity that was formerly a pass-through entity but has been converted to some other organizational form within three years before the sale (e.g., an S corporation that is converted to a C corporation by dis-electing S corporation status).

Under prior law, a nonresident who owned 20% or more of a pass-through entity in any of the three preceding years and who sold (or otherwise disposed of) some or all of that interest was required to apportion the income from the sale using the average of the entity's income apportionment factors over the most recent three years. The computation was required for the purpose of computing the nonresident credit, which depends on the apportionment of a nonresident's share of an entity's business income. The computation is directed at nonresidents who increase their nonresident credit--thus reducing their Ohio tax--by applying only the entity's most recent year's apportionment factors.

The act applies the three-year apportionment requirement to nonresidents owning 20% or more of an entity that is closely held in the sense that, for at least one day in the three-year period ending on the last day of the nonresident's taxable year in which the sale occurs, only five or fewer persons own the entity or only one person owns at least 50% of the entity. (The act also specifies that the ownership interests must be equity interests with voting rights, and includes both direct and indirect ownership.)

The three-year apportionment requirement applies even if the entity in which the nonresident sells an interest converts from being a pass-through entity into another organizational form but was a pass-through entity on at least one day during that three-year period. The act's changes appear to prevent a nonresident from avoiding the three-year apportionment requirement--and thereby possibly increasing their nonresident credit and reducing their Ohio tax liability--by the entity changing its organizational form from a pass-through entity to another form, such as a C corporation, before the nonresident sells the interest in the entity.

IV. Property Taxes and Transfer Fees

Elimination of the 10% rollback in real property taxes for real property used in business

(R.C. 319.302 and 323.152; Section 557.15)

Under prior law, all real property, and manufactured and mobile homes that are treated as real property for purposes of property taxation, received a reduction of 10% of the property tax bill (known as the "rollback"). Under the act, beginning in tax year 2005, the rollback will apply only to property not intended primarily for use in a "business activity." Property intended primarily for use in a business activity will no longer receive the rollback. The act specifies that the phrase "business activity" includes all uses of real property except those specifically enumerated in the act. Under the act, property used for the following purposes is not considered to be used in a "business activity" and is therefore eligible for the rollback: farming;²⁶² leasing property for farming; occupying or holding property improved with single-family, two-family, or three-family dwellings; leasing property improved with single-family, two-family, or three-family dwellings; or holding vacant land that the county auditor determines will be used for farming or to develop single-family, two-family, or three-family dwellings. Property used in any other activity is deemed under the act to be used in a "business activity" and therefore ineligible for the rollback.

The county auditor must review each parcel of real property each year to determine if it qualifies for the rollback as of January 1 of the current tax year. The act specifies that the determination of whether real property qualifies for the rollback is solely for the purpose of allowing the rollback.

The act authorizes the Tax Commissioner to adopt rules for the administration of the rollback.

²⁶² *Land and improvements used in the commercial production of timber are not eligible for the rollback if they are already receiving preferential tax treatment under continuing law. Under continuing law, forest land that the owner declares is devoted exclusively to forestry or timber growing is taxed at 50% of the local tax rate (R.C. 5713.23 (not in the act)). Further, under continuing law, all land devoted exclusively to agricultural use is valued for taxation purposes at the current value the land has for agricultural use rather than the value the land would have if used in the most profitable manner possible (R.C. 5713.31 (not in the act)). Valuing agricultural land in this manner deflates the taxable value of the land, thereby reducing property taxes. The act specifies that any real property used in the commercial production of timber that receives either of these existing tax benefits is not eligible for the rollback.*

Continuing law provides for the reduction of real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes, in an amount equal to $\frac{1}{4}$ of the amount by which taxes are reduced under the 10% rollback (which equals 2½%). The act replaces this equation with language that simply states that to provide a partial exemption, real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes is 2½% of the amount of taxes to be levied on the homestead or home.

Phase-out of tax on business and telecommunications personal property

(R.C. 5711.01, 5711.16, 5711.21, 5711.22, 5727.01, 5727.02, 5727.031, 5727.06, and 5727.111)

The act phases out taxation of all tangible personal property used in business over four years, beginning in 2006 and ending in 2009, when all such property becomes exempted from taxation. Under prior law, such property was subject to taxation by local taxing jurisdictions. All such property other than inventory was taxable on 25% of its value. Inventory was taxed on 23% of its value, and was scheduled to be taxed on decreasing percentages of its value, reduced by two percentage points per year from 2007 through 2017, when it was scheduled to become exempt. New machinery and equipment used in manufacturing is exempted immediately under the act, as explained below. The act also phases out the taxation of tangible personal property used in providing telecommunications service, which includes the property of telephone companies, telegraph companies, and interexchange telecommunications companies and is taxed as public utility property. The phase-out of the tax on telecommunications property is over a five-year period beginning in 2007.

Exemption of new business machinery and equipment

(R.C. 5711.16(A) and 5711.22(F))

The act exempts from property taxation all machinery and equipment used in business that is installed (or otherwise first used in business in Ohio) after the end of 2004. The exemption applies to all such property if it was not used in business before 2005 by the property's owner or by a related member or predecessor of the owner, unless the property was the inventory of the owner, related member, or predecessor (in which case the property is subject to the phase-out described below).

The act defines manufacturing equipment so that it can be distinguished from other tangible personal property. Manufacturing equipment includes machinery and equipment and tools and implements, including any associated patterns, jigs, dies, drawings, and business fixtures, used at a manufacturing

facility by a manufacturer, including any such property leased to the manufacturer. Manufacturing equipment does not include property used for general office purposes. A manufacturing facility is defined as a facility or portion of a facility used for manufacturing, mining, refining, rectifying, or combining different materials with a view of making a gain or profit, including a portion of a facility used to store or transport raw materials, work-in-process, or finished goods inventory, for packaging, for research, or to test for quality control, so long as manufacturing, mining, refining, rectifying, or combining is also performed at the facility. A manufacturing facility does not include any portion of a facility used primarily for making retail sales.

Phase-out of tax on all other business tangible personal property

(R.C. 5711.22(G))

All business tangible personal property other than the new manufacturing equipment that is exempted immediately is to be taxed on decreasing percentages of its value for five years beginning with tax year 2006 until it is no longer subject to taxation in 2009 and thereafter. The phase-out applies to three classes of property: manufacturing equipment, furniture and fixtures, and inventory. Since inventory taxation was scheduled to be phased out under prior law according to a much slower schedule, the act's phase-out represents an acceleration in the phase-out for inventory taxation.

The assessment percentages applicable to the three classes of property decline as shown in the following table:

<u>Year</u>	<u>Percentage</u>
2005	25% (inventory 23%)
2006	18.75%
2007	12.5%
2008	6.25%
2009	0%

Phase-out of tax on telecommunications property

The act phases out taxation of the tangible personal property of telephone companies, telegraph companies, and interexchange telecommunications companies over five years, beginning in 2007. Under prior law, telephone and telegraph company property was taxed on 25% of its value unless it was in place

before 1996, in which case it was to be taxed on 67% of its value in 2005, 46% in 2006, and 25% in 2007 and thereafter. Interexchange telecommunications company property was taxed on 25% of its value.

Under the act, all such property is to be taxed on 20% of its value in 2007, 15% in 2008, 10% in 2009, and 5% in 2010. It will be exempted from taxation in 2011 and thereafter. Also, between 2007 and 2010, such property will 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 currently is--i.e., according to wire-miles or the cost of property located in each taxing unit.

Reimbursement of local taxing units

(R.C. 5751.20 to 5751.22)

The act provides reimbursement to school districts and other local taxing units for some of the net revenue reduction that results from the act's exemption and phase-out of machinery and equipment and furniture and fixtures taxation, the accelerated inventory taxation phase-out, and the phase-out of telecommunications property taxation. Reimbursement is to be paid to school districts and joint vocational school districts through the newly created School District Tangible Property Tax Replacement Fund and to other local taxing units through the newly created Local Government Tangible Property Tax Replacement Fund. These funds are to be funded by a portion of the new commercial activity tax. The act prescribes specific computations and procedures the Tax Commissioner and the Department of Education are to follow to implement the reimbursement.

School districts. Generally, the reimbursement for school districts (including joint vocational school districts) is based on the net revenue effect of the act's property tax exemption and phase-outs after offsetting the increased state funding school districts receive when their taxable property values decline, and disregarding the effects of the scheduled phase-down of inventory taxes. The revenue effect of the previously enacted inventory tax phase-out is essentially subtracted from the revenue effect of the act's exemptions and phase-outs, meaning the act does not reimburse districts for revenue losses resulting from the previously enacted inventory phase-down. (Nor does ongoing law provide direct reimbursement for the previously enacted inventory phase-down.) For the same reason, the state education aid offset incorporated in the act's reimbursement formula does not offset state aid increases to the extent those increases result from the previously enacted inventory phase-down. In other words, the act's reimbursement provision reimburses only for net revenue losses resulting from the act's tax changes, disregarding previously enacted changes.

The reimbursable net revenue losses generally are computed on the basis of 2004 taxable values and school district levies in effect in 2004 or in 2005 (so long as the levy was approved by voters before September 1, 2005). The reimbursement for telecommunications property also is based on tax year 2004 values as if all the property was assessed at 25% of value for that year, but since the phase-out of taxes on that property does not begin until 2007, reimbursement is delayed until after the phase-out begins.

In the case of levies raising a fixed sum of money, such as bond levies and emergency levies, reimbursable losses are computed for as long as the district continues to impose the levy after 2005 and through 2018, including, in the case of emergency levies only, any renewals for the same amount as the original emergency levy minus the 2006 reimbursement amount. If a voted debt levy continues beyond 2018, it continues to be reimbursed until it expires. Voted debt levies also are reimbursed fully and do not become subject to the phase-down reimbursement percentages after 2010 (except for their contribution to the ½-mill increase in the school district's fixed-sum levies, which is not reimbursed). The total reimbursement for all fixed-sum levies imposed by the school district is to within ½-mill worth of the reimbursable loss. The unreimbursed ½-mill is divided among the school district's fixed-sum levies in proportion to their relative rates.

Reimbursement for fixed-rate levies is to be paid in full through fiscal year 2011, and then in declining amounts through the end of fiscal year 2018, but fixed-rate levies expiring after fiscal year 2010 are not reimbursed for any year after their expiration. The rate of decline in the reimbursement for fiscal years 2011 and 2012 is 3/17 per year of the computed fixed-rate loss; the rate of decline for fiscal years 2013 through 2018 is 2/17 per year. In fiscal year 2018, the last 1/17 is paid, and no reimbursement is paid thereafter. Fixed-sum levies and unvoted millage for debt are fully reimbursed through the end of fiscal year 2018, but, in the case of unvoted debt levies, the reimbursement is payable only so long as the millage continues to be levied for debt purposes. If the purpose is changed to some other purpose, the reimbursement is computed according to the phase-out reimbursement percentages applicable to fixed-rate levies. Reimbursement payments are to be made three times per year in May, August, and November, beginning in May 2006 and ending in May 2018.

Other taxing units. Reimbursement to local taxing units other than school districts and joint vocational school districts is similar in concept to the school district reimbursement except there is no offset for increases in state aid. Accordingly, local taxing units are reimbursed for the net revenue losses caused by the act's exemption of newly installed manufacturing equipment, the phase-out of taxes on existing machinery and equipment and furniture and fixtures, the incremental revenue loss from the accelerated phase-out of taxes on inventory, and

the phase-out of taxes on telecommunications personal property. Revenue losses from the previously enacted phase-down of inventory taxes are not reimbursed. Levies qualify for reimbursement under the same terms as for school district levies, except local taxing units do not impose emergency levies of the sort that school districts may impose. Reimbursement for fixed-rate levies is to be paid in full through 2010 and in declining amounts from 2011 through the end of calendar year 2017. The rate of decline in the reimbursement for 2011 and 2012 is 3/17 of the fixed rate levy loss; the rate of decline from 2013 through 2017 is 2/17 of the fixed-rate loss. In 2017, the last 1/17 is paid, and no reimbursement is paid thereafter. Fixed-sum levies and unvoted millage for debt are to be fully reimbursed through 2017, but, in the case of unvoted debt levies, the reimbursement is payable only so long as the millage continues to be levied for debt purposes. If the purpose is changed to some other purpose, the reimbursement is computed according to the phase-out reimbursement percentages applicable to fixed-rate levies. Reimbursement payments are to be made in each May, August, and October, beginning in May 2006 and ending in October 2017.

Reimbursement for county administrative fee losses

(R.C. 5721.23)

The act devotes a portion of the reimbursement payable to school districts and taxing units to compensate county auditors and treasurers for the loss of administrative fees payable on the basis of property tax collections. Under continuing law, county auditors and treasurers are entitled to a percentage of the property taxes collected to help cover the cost of administering and collecting property taxes, including the percentage credited to the real estate assessment fund to defray the cost of assessing real property. Under the act, a percentage of the reimbursable revenue loss is used to reimburse the county auditors, county treasurers, and real estate assessment funds for the loss of these fees. The percentage is 1.1159% if the county's 2004 tax collections from all tax duplicates (other than the estate tax list) were \$150 million or less, and 0.9659% if the county's 2004 collections were more than \$150 million. The fee reimbursement compensation is phased out according to the reimbursement phase-out schedule for local taxing units.

Clarification of definition of "manufacturing equipment"

(R.C. 5711.16(A)(2))

The act states that nothing in the definition of "manufacturing equipment," which includes patterns, jigs, dies, and drawings, is to be construed as changing the general definition of "personal property," which excludes from taxation

patterns, jigs, dies, or drawings that are held for use and not for sale in the ordinary course of business.

Joint Legislative Tax Reform Impact Study Committee

(Section 557.13.09)

The act, in a provision vetoed by the Governor, would have created the Joint Legislative Tax Reform Impact Study Committee to study the effects on school districts and other local taxing units of the act's phase-out of the tangible personal property tax and any other matter related to the phase-out the committee considered of significance. In particular, the committee would have been required to estimate the total taxes lost by school districts and by local taxing units as a result of the phase-out; to estimate the capacity of the commercial activity tax to replace lost tangible property tax revenues and to fund the General Revenue Fund; to estimate the cost for delivery of services by school districts and other local taxing units; to estimate emerging demands for those services arising from demographic and economic changes to districts and units; to identify alternatives for effectively balancing state and local tax revenues available to school districts and other taxing units and their responsibilities for delivery of services; to examine how the commercial activity tax treats for-profit corporations as compared to nonprofit corporations; to review the impact of the commercial activity tax on the various business sectors; and to estimate the revenue impact of reclassifying rental real property having more than three units as residential/agricultural real property instead of as nonresidential/agricultural real property.

The Committee would have had ten members from the General Assembly: the chairperson of the Senate Ways and Means and Economic Development Committee, four senators appointed by the Senate President, the chairperson of the House Ways and Means Committee, and four representatives appointed by the House Speaker. Not more than two of the members respectively appointed by the President and Speaker could have been members of the same political party. The two chairpersons would have served as co-chairpersons of the study committee.

The Department of Taxation would have been required to cooperate with the study committee and, upon request, to provide the study committee with any information or assistance it needs to carry out its duties.

The study committee would have been required to hold at least four meetings at the call of the co-chairpersons.

The Committee would have been required to issue a report of its findings and recommendations by January 31, 2006, at which time it would have ceased to exist.



Reduction in assessment rate on public utility property

(R.C. 5727.01(E) and 5727.111)

Currently, most electric companies' transmission and distribution equipment is taxed on 88% of its value and their other property is taxed on 25% of its value. The act reduces the 88% assessment rate for transmission and distribution equipment to 85% and reduces the 25% assessment rate for all other property to 24%. The reductions take effect beginning in tax year 2006. But the act imposes the tangible personal property tax on the patterns, jigs, dies, and drawings of an electric company or a combined company that are for use in the activity of an electric company.

The act does not change the current assessment rates on the property of rural electric companies, which are cooperatives and other organizations providing electricity to their members, primarily in rural communities.

Tax treatment of nonutility electricity providers

(R.C. 5711.21, 5711.22, 5727.02, and 5727.031)

Under continuing law, when a business other than an electric company generates or distributes electricity for its own use, as in large manufacturing operations, and provides electricity to others (for example, when excess capacity is available), the property used to generate or distribute the electricity is treated, in effect, as partly business property and partly public utility property. This treatment recognizes that the method of deriving the value of public utility property and business property differs, as do the respective assessment rates. The value of the property is divided into two parts each year on the basis of the relative percentage of the electricity used by the generator and by anyone else in the previous year. The part attributed to the generator is valued and assessed like business property (at 25%), and the part attributed to generation for others is treated as electric company property: i.e., the transmission and distribution component of that part is valued and assessed like that of electric companies (at 88%), and the generation component is valued and assessed like that of electric companies (at 25%).

Under the act, businesses that generate electricity and supply some of it to others, but whose primary business is not supplying electricity, will continue to be taxed on their electricity-related property in the same manner as under prior law. However, because much of the part of that property attributed to the business's own electricity use will no longer be taxable after 2008 (because of the act's phase-out of tax on business machinery and equipment), the business will be required to report its electricity-related property as an electric company does beginning with



2009. Its report will have to contain only the part of the value of the property attributed to supplying electricity to others (determined on the basis of the relative percentage of electricity supplied to others, as under prior law). The reportable property will continue to be determined and assessed as under prior law--i.e., in the same manner as for the equivalent electric company property--but at the act's new assessment rates: 85% for transmission and distribution property and 24% for all other property.

Railroad property assessment

(R.C. 5713.01, 5727.06, 5727.10, 5727.11, and 5727.12; Section 557.19)

Under prior law, the Tax Commissioner valued and assessed the real property of railroads. The act provides that beginning in tax year 2006, the Commissioner must value and assess real property owned by a railroad that is used in railroad operations. For tax year 2006 and thereafter, the county auditor must value and assess real property owned by a railroad that the Commissioner determines is not used in railroad operations.

Property leased to public utilities

(R.C. 5711.21(C), 5711.22(C), 5727.01(M), 5727.06, 5727.08, 5727.11, and 5727.23)

Under continuing law, property owned by someone other than a public utility or interexchange telecommunications company but leased by that person to a public utility or interexchange telecommunications company under a sale and leaseback arrangement is valued and assessed as if it were owned by the public utility or interexchange telecommunications company.

The act maintains the current treatment for property leased under a sale and leaseback arrangement, but applies the same treatment to tangible personal property leased to a public utility or interexchange telecommunications company other than through a sale and leaseback transaction, beginning in 2009. (This provision does not apply to property leased to a railroad company, water transportation company, telephone company, or telegraph company.) The property is to be reported and the tax paid by the lessor of the property (termed the "public utility property lessor") using the assessment rate that would apply to the lessee if the lessee owned the property.

The act provides that personal property owned by a public utility property lessor that is leased, in other than a sale and leaseback transaction, to a public utility or an interexchange telecommunications company must be reported by the lessor and the lessor must pay the public utility property tax. A "public utility

property lessor" is any person, other than a public utility or an interexchange telecommunications company, that leases personal property, other than in a sale and leaseback transaction, to a public utility, other than a railroad, water transportation, telephone, or telegraph company, if the property would be taxable property if it was owned by the public utility. A public utility property lessor that leases property to a public utility is not a public utility, but must report its property and be assessed in the same manner as the utility to which it leases the property.

The act commences the reporting and payment requirement in tax year 2009, to coincide with the phase-out of the general personal property tax. The act provides that a public utility property lessor is subject to the public utility personal property tax law only for the purposes of reporting and paying the tax on taxable property it leases to a public utility (i.e., to other than the four excepted classes of utilities indicated above).

Taxation of oil and gas recovery equipment

(R.C. 5709.112 and 5715.01; Section 557.13.03)

The act provides that for tax year 2006 and thereafter, all tangible personal property used to recover oil and gas is exempt from tangible personal property tax treatment, when it is installed and located on the premises or the leased premises of the owner. The exemption does not apply if the property is not installed on the premises or leased premises of the owner, or if it is used for the transmission, transportation, or distribution of oil or gas. The exemption also does not apply to public utilities that file reports on their property under the public utility property tax law and have their property assessed by the Tax Commissioner. The act authorizes the Commissioner to adopt rules governing the administration of this exemption.

The act also provides that when determining the true value of minerals or rights to minerals for the purpose of real property taxation, the Tax Commissioner cannot include in that value the value of tangible personal property used in the recovery of those minerals. The act requires that the Commissioner review the calculations of the multipliers used in the determination of oil and gas valuations in sufficient time to be used in the Commissioner's annual entry adopting the multipliers for tax year 2006, to ensure that oil and gas properties are uniformly assessed under the act.

School district property tax to offset funding formula charge-off increases

(R.C. 3317.01 and 5705.211)

The act, in a provision vetoed by the Governor, would have authorized school districts, with voter approval, to levy a property tax designed to raise an amount of revenue each year equal to reductions in basic state funding caused by increases in the charge-off computation. The charge-off is a deduction from the district's state basic per-pupil funding equal to 2.3% of the district's "recognized valuation." Recognized valuation is a measure of a school district's taxable property value (including both real property and tangible personal property). The measure incorporates appreciation in real property values in one-third increments over the three-year property reassessment cycle. As recognized valuation increases or decreases in response to changes in property values, the charge-off increases or decreases accordingly, which in turn causes a district's basic funding to decrease or increase by a factor of 2.3% of the change in recognized valuation.

The tax rate would have been adjusted each year to raise the required amount. But the rate would have been limited so that the levy could not raise so much that the total current expense revenue from all property levies could increase by more than 4% per year. (The act would have authorized a school board to adopt a lower growth percentage.) Revenue increases from new current expense levies would not have counted toward the growth limitation unless the new levy was a renewal or replacement levy imposed at the same rate or a lesser rate as compared to the levy being renewed or replaced. The tax would have had to have been levied for current expenses, and could have been levied either permanently or for a specified number of years, but not fewer than five years.

Accelerate phase-out of state reimbursement for \$10,000 business property exemption

(R.C. 321.24(G))

Continuing law exempts the first \$10,000 of a business's tangible personal property from property taxation (R.C. 5709.01(C)(3)). Currently, the state reimburses local taxing districts for the resulting revenue reduction, but Am. Sub. H.B. 95 of the 125th General Assembly phases-out the state's reimbursement for the exemption, over ten years. Under the phase-out, county treasurers receive a payment each year from the General Revenue Fund that is a reduced percentage of the county's fiscal year 2003 reimbursement. The payment is then apportioned among the county's taxing districts as if levied and collected as personal property taxes. No further reimbursements are to be paid after fiscal year 2012.

The act accelerates the phase-out period so that no reimbursement payments are made after fiscal year 2009. The act also adjusts the reimbursement percentages in fiscal year 2006, from 70% to 64%; in fiscal year 2007, from 60% to 40%; in fiscal year 2008, from 50% to 32%; and in fiscal year 2009, from 40% to 16%.

Equalization of real property assessments

(R.C. 5715.24)

Under continuing law, all real property in a county is reappraised every six years for purposes of establishing its taxable value. The Tax Commissioner is required to determine whether the real property in counties that have completed a sexennial reappraisal in the current year has been properly assessed. If, upon reviewing a sexennial reappraisal, the Commissioner determines that the property is not properly listed for taxation, the Commissioner is required to increase or decrease the aggregate value of the real property, or any class of real property, by a percentage or amount that will cause it to be correctly assessed at its taxable value.

The act provides that in determining whether a class of real property has been assessed at its correct taxable value and in determining any percent or amount by which the aggregate value of the class from a prior year should be increased or decreased to be correctly assessed, the Commissioner is to consider only the aggregate values of property that existed in the prior year and that is to be taxed in the current year. The value of new construction is not to be regarded as an increase in aggregate value from the prior year. Likewise, the value of property destroyed or demolished since the prior year is to be deducted from the aggregate value of that class for the prior year.

School district property tax replacement payments when district mergers occur

(R.C. 5727.85(G) and (J))

Under continuing law, school districts and joint vocational school districts receive property tax replacement payments to offset the loss of revenues that occurred when the assessment rates on the tangible personal property of rural electric companies, electric companies, and natural gas companies were reduced. These replacement payments come from a portion of the kilowatt-hour and MCF tax revenues, and are based on a district's fixed-rate levy loss and fixed-sum levy loss. The act establishes a procedure to determine how payments are to be made to those districts that merge with or transfer territory to other districts, as follows:

Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
Complete merger of two or more districts	Successor district receives the sum of the fixed-rate levy losses for each district merged.	Successor district receives the sum of the fixed-sum levy losses for each district merged.
Transfer of part of a district's territory to an existing district	Recipient district receives the transferring district's total fixed-rate levy loss times a fraction, with the numerator being the value of electric company tangible personal property in the part of the territory transferred, and the denominator being the total value of that property in the entire district from which the territory was transferred. ²⁶³	The Department of Education, in consultation with the Tax Commissioner, makes an equitable division of the fixed-sum levy losses for both districts, if the recipient district takes on debt from the other district.
Transfer of part of one or more districts' territory to form a new district between January 1, 2000, and January 1, 2005	New district receives just its current fixed-rate levy loss through August 2006. From February 2007 to August 2016, the new district receives the lesser of (1) an amount determined under continuing law (R.C. 5727.85(C)) by first subtracting the district's state education aid for fiscal year 2002 from the district's state education aid for the current fiscal year and then subtracting the result of that calculation from the district's inflation-adjusted property tax loss, or (2) the amount determined as if the new district were a local taxing unit entitled to receive a payment for its fixed rate levy loss under the schedule in continuing law (R.C. 5727.86(A)(1)).	The Department of Education, in consultation with the Tax Commissioner, makes an equitable division of the fixed-sum levy losses for all the districts, if the new district takes on debt from the other district(s).

²⁶³ *The value of electric company tangible personal property is determined for the most recent year for which data is available.*

Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
Transfer of part of one or more districts' territory to form a new district on or after January 1, 2005	New district does not receive any fixed-rate levy loss. The transferring district(s) continue to receive their current fixed-rate levy loss.	New district does not receive any fixed-sum levy loss, unless it takes on debt from the other district(s), in which case the Department of Education, in consultation with the Tax Commissioner, makes an equitable division of the losses for the districts.

The act also changes one of the ending dates by which the Director of Budget and Management must transfer amounts from the School District Property Tax Replacement Fund to the General Revenue Fund, from February 2017 to May 2017.

Computation used to determine amounts deposited each year in the Property Tax Administration Fund changed

(R.C. 321.24 and 5703.80)

Continuing law provides for a percentage of real property tax rollback reimbursements to local governments to be diverted to a special fund known as the Property Tax Administration Fund. The fund is used by the Department of Taxation to defray its costs of administering property taxation and of equalizing real property. The Department oversees the equalization of real property valuation throughout the state, and administers the assessment of all public utility property and tangible personal property of businesses operating in more than one county.²⁶⁴

The Property Tax Administration Fund is funded from a portion of the state reimbursement that otherwise is payable to taxing districts for the 10% rollback for real property. Under prior law, the portion diverted to the fund was the sum of the following:

- 0.3% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes);
- 0.15% of the taxes charged against public utility personal property;

²⁶⁴ Under the act, as explained above, the Tax Commissioner will assess the real property of railroads only when it is used in railroad operations.



- 0.75% of taxes charged against tangible personal property of businesses owning property in more than one county.

The act changes the computation used to determine the portion of the 10% rollback reimbursement to be diverted to the Property Tax Administration Fund. Under the act, the portion diverted to the fund is computed as follows:

- For fiscal year 2006:

0.33% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus

0.5% of the taxes charged against public utility personal property; plus

0.5% of the taxes charged against tangible personal property of businesses owning property in more than one county.

- For fiscal year 2007:

0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus

0.56% of the taxes charged against public utility personal property; plus

0.56% of the taxes charged against tangible personal property of businesses owning property in more than one county.

- For fiscal year 2008 and thereafter:

0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus

0.6% of the taxes charged against public utility personal property; plus

0.6% of the taxes charged against tangible personal property of businesses owning property in more than one county.



State payment of estimated taxes for acquired property

(R.C. 319.20)

Prior law specified that whenever the state acquired an entire or partial parcel of real property in fee simple, the county auditor, upon application of the grantor, the property owner, or the state, had to prepare an estimate of the taxes that were a lien on the property, but that had not been determined, assessed, and levied for the year in which the property was acquired. The county auditor was required to apportion the estimated taxes proportionately between the grantor and the state for the period of the lien year that each had or would have had ownership or possession of the property, whichever was earlier.

The act requires the county treasurer to accept payment from the state for estimated taxes at the time the real property is acquired. If the state has paid in full in the year in which the property is acquired that portion of the estimated taxes that the Tax Commissioner determines are not subject to remission by the county auditor for such year,²⁶⁵ then the estimated taxes paid are to be considered the tax liability on the exempted property for that year.

Interest rate reduced on personal property tax late payments and overpayments

(R.C. 5703.47 and 5719.041)

Tangible personal property located and used in business in Ohio is subject to taxation by local taxing units. If the taxes are not paid on time, a 10% penalty is charged and interest accrues on the unpaid balance at the "rate per annum." If taxes are overpaid, interest accrues at the same rate on the overpayment until a refund is issued. Most of the interest on late payments is credited to the funds of local taxing units; interest on refunded overpayments is payable from the funds of local taxing units.

Continuing law provides that on October 15 of each year, the Tax Commissioner must determine the federal short-term rate, rounded to the nearest whole number per cent, plus 3%. That rate is the "rate per annum." The act changes this rate for personal property taxes. For purposes of those taxes, the "federal short-term rate" is the federal short-term rate rounded to the nearest whole number per cent. Thus, the act reduces the interest rate that accrues on personal property tax late payments and overpayments, by applying the "federal short-term rate" rather than the rate per annum.

²⁶⁵ Continuing law requires the county auditor to remit taxes that have not yet been assessed in the year the property is acquired by the state (R.C. 5713.08(C)).

Incentive districts

Overview

(R.C. 5709.40, 5709.73, 5709.77, and 5709.78)

The act makes various changes in the law regarding incentive districts, and places certain conditions on their creation. Under continuing law, the legislative authority of a municipal corporation may adopt an ordinance, or a board of county commissioners or board of township trustees may adopt a resolution, that creates an "incentive district" (also known as an area-wide TIF) in an area not more than 300 acres in size enclosed by a continuous boundary and that has certain distress characteristics, such as high unemployment, or contains public infrastructure that is inadequate to meet the development needs of the district. The ordinance or resolution also must declare that "improvements" to parcels in the district are for a public purpose and exempt from taxation, and must specify the life of the district, the percentage of improvements to be exempted, and the public infrastructure improvements to be made that benefit or serve parcels in the district. "Improvements" means the increase in the assessed value of real property in the incentive district, *excluding* public infrastructure improvements, e.g., roads, water and sewer lines, environmental remediation, or land acquisition. Under prior law, ordinances or resolutions creating incentive districts had to have been adopted on or before June 30, 2007.

Conditions for creating incentive districts

(R.C. 5709.40(A) and (C), 5709.73(A) and (C), 5709.77(D), and 5709.78(B))

The act eliminates the sunset date for incentive districts so that there is no date limitation on the adoption of ordinances or resolutions creating the districts. The act also provides that no legislative authority may adopt an ordinance, or no board of county commissioners or township trustees may adopt a resolution, that creates an incentive district if the population of the municipal corporation, county, or township exceeds 25,000 and, as a result of adopting the ordinance or resolution, more than 25% of the taxable value of the municipal corporation, county, or township, as of January 1 of the year in which the ordinance or resolution takes effect, is exempted because of an incentive district. The 25% limitation does not apply to an incentive district that was created by an ordinance or resolution adopted prior to January 1, 2006, unless an additional incentive district is created after that date.

The act also requires that the ordinance or resolution creating an incentive district identify one or more specific projects being, or to be, undertaken in the

district that place additional demand on the public infrastructure improvements designated in the ordinance or resolution. The project identified may, but need not be, the project that under continuing law must be designated in the ordinance or resolution as placing real property in use for commercial or industrial purposes, if the ordinance or resolution authorizes the use of service payments for the purpose of housing renovations within the district.

The act eliminates the exclusion of public infrastructure improvements from the definition of "improvements" so that they are *included* as improvements to parcels in the incentive district. The act further provides that public infrastructure improvements to be made in an incentive district cannot include police or fire equipment.

Notice requirements and reimbursement of municipalities, counties, or townships in which incentive districts are located

(R.C. 5709.40(E), 5709.73(E), and 5709.78(D))

The act provides that if a proposed ordinance or resolution creating an incentive district exempts improvements with respect to a parcel for more than ten years, or the percentage of the improvement exempted from taxation exceeds 75%, not later than 45 business days prior to adopting the ordinance or resolution the legislative authority of a municipal corporation or the board of county commissioners or township trustees proposing it (the "proposing subdivision") must deliver to the other subdivision in which the incentive district is or will be located, a notice that states the proposing subdivision's intent to adopt an ordinance or a resolution creating an incentive district. This notice requirement applies to all of the following: (1) the legislative authority of a municipal corporation, which must deliver the notice to the board of county commissioners of the county within which the incentive district is or will be located, (2) a board of township trustees, which must deliver the notice to the board of county commissioners of the county within which the incentive district is or will be located, and (3) a board of county commissioners, which must deliver the notice to the board of township trustees of any township or the legislative authority of any municipal corporation within which the incentive district is or will be located. The notice must include a copy of the proposed ordinance or resolution.

The other subdivision in which the incentive district is or will be located, by ordinance or resolution, as appropriate, may object to any exemption for the number of years in excess of ten or to the percentage of the improvement to be exempted in excess of 75%, or both, or may accept either or both exemptions. If the other subdivision objects, it may negotiate an agreement with the proposing subdivision that provides to the other subdivision in which the incentive district is or will be located in the 11th and subsequent years of the exemption period

compensation equal in value to not more than 50% of the taxes that would be payable to the other subdivision on the portion of the improvement that exceeds 75%, were that portion subject to taxation. The other subdivision must certify its resolution or ordinance to the proposing subdivision not later than 30 days after receipt of notice of the proposing subdivision's intent to adopt an ordinance or resolution creating an incentive district.

If the other subdivision in which the incentive district is or will be located does not object, or fails to certify its ordinance or resolution objecting to an exemption, within 30 days after receipt of the proposing subdivision's notice, the proposing subdivision may adopt the ordinance or resolution creating the incentive district, and no compensation has to be provided to the other subdivision. If the other subdivision timely certifies its ordinance or resolution objecting to the proposing subdivision's ordinance or resolution creating the incentive district, the proposing subdivision may adopt the ordinance or resolution creating the incentive district at any time after a compensation agreement is agreed to by the proposing subdivision and the other subdivision (see above), or, if no compensation agreement is negotiated, at any time after the proposing subdivision agrees to provide compensation to the other subdivision of 50% of the taxes that would be payable to the other subdivision in the 11th and subsequent years of the exemption period on the portion of the improvement that exceeds 75%, were that portion subject to taxation.

Grandfathering incentive districts

(Section 557.17)

The new conditions for creating incentive districts and the notice and reimbursement requirements discussed immediately above do not apply to a project if either (1) a project agreement has been completed on or before December 31, 2005, for the project or (2) bonds have been issued for the project on or before December 31, 2005.

Treatment of special tax levies levied on property exempted in incentive districts

(R.C. 5709.40(F), 5709.73(F), and 5709.78(E))

The act provides that property tax levies that are enacted (1) on and after January 1, 2006, for the following purposes and (2) after the date an ordinance or resolution creating an incentive district is adopted on or after January 1, 2006, must be levied on property in the district that was exempted from taxation by the ordinance or resolution:

(1) Community mental retardation and developmental disabilities programs and services.

(2) Providing or maintaining senior citizens services or facilities.

(3) County hospitals.

(4) Alcohol, drug addiction, and mental health services.

(5) Library purposes.

(6) The support of children services and the placement and care of children.

Revenues collected from these special levies cannot be used to provide service payments.

Tax increment financing changes

(R.C. 5709.40(B), (D), and (G), 5709.73(B), (D), and (G), and 5709.78(A), (C), and (F); Section 553.02.06)

On and after January 1, 2006, the act permits real property tax exemptions granted under the tax increment financing (TIF) law (for both incentive districts and parcel-by-parcel public purpose TIFs) to begin at any time specified in the TIF resolution or ordinance. Under prior law, the exemption began when the increased value from the parcel first appeared on the tax list (whether through development or an increase in assessed value). The act also provides that exemptions from taxation granted pursuant to an ordinance or resolution adopted under the TIF law on or after July 1, 2005, and on or before December 31, 2005, commence with the tax year specified in the ordinance or resolution.

Under former law, a public infrastructure improvement could receive a TIF tax exemption and be financed with service payments in lieu of taxes if a project on a parcel placed "direct, additional demand" on the improvement. The act eliminates this test, but continues to require that the public infrastructure improvements directly benefit the parcel for which the improvements are declared to be a public purpose. The act's changes in this regard pertain to TIF tax exemptions granted on a parcel-by-parcel basis, not incentive districts.

The act makes other modifications to provisions in the TIF law that govern when a school district must approve of a property tax exemption, but the modifications do not appear to change the substance of those provisions. The changes expressly acknowledge that any compensation to be paid to the school district must be mutually agreeable.

Real property tax exemption for certain buildings and lands used by a state university

(R.C. 5709.07; Section 553.02.03)

Continuing law provides that public colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit, are exempt from real property taxation, but leasehold estates or real property held under the authority of a college or university of learning do not qualify for the exemption.

The act creates a real property tax exemption for buildings and lands that satisfy all of the following:

(1) The buildings are used for housing for full-time students or for housing-related facilities for students, faculty, or employees of a state university, or for other purposes related to the state university's educational purpose, and the lands are underneath the buildings or are used for common space, walkways, and green spaces for students, faculty, or employees of the state university. "Housing-related facilities" includes both parking facilities related to the buildings and common buildings made available to students, faculty, or employees of a state university.

(2) The buildings and land are supervised or otherwise under the control, directly or indirectly, of a 501(c)(3) charitable organization²⁶⁶ with which the state university has entered into a "qualifying joint use agreement" that entitles the university's students, faculty, or employees to use the lands or buildings. A "qualifying joint use agreement" is an agreement that satisfies all of the following: (a) the agreement was entered into before June 30, 2004, (b) the agreement is between a state university and a 501(c)(3) charitable organization, and (c) the state university that is party to the agreement reported to the Board of Regents that the university maintained a headcount of at least 25,000 students on its main campus during the academic school year that began in calendar year 2003 and ended in calendar year 2004.²⁶⁷

²⁶⁶ *Corporations, community chests, funds, or foundations, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals.*

²⁶⁷ *Under continuing law, every state university and college that receives state aid is required to file annual reports with the Board of Regents (R.C. 3345.05 (not in the act)).*

(3) The state university has agreed, under the terms of, and to the extent applicable under, the qualifying joint use agreement, to make payments to the charitable organization in amounts sufficient to maintain agreed-upon debt service coverage ratios on bonds related to the lands or buildings.

The act provides that the leasing of space in housing-related facilities is not considered to be an activity with a view to profit; thus, the leases are exempt from real property taxation. As noted above, leasehold estates or real property held under the authority of a college or university generally is subject to taxation. The act exempts this property from taxation if it satisfies all the conditions described above.

The act defines a "state university" as a public institution of higher education that is a body politic and corporate, with each of the following recognized as a state university: University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

The act specifies that real property that satisfies the conditions for exemption described above is to be deemed to be used with reasonable certainty in furthering or carrying out the necessary objects and purposes of a state university.

The act provides that this new exemption first applies with respect to tax year 2005. Notwithstanding the possibility that buildings and lands may qualify for a real property tax exemption under another section of the Revised Code specifically applicable to such buildings and lands, the above-described buildings and lands are nonetheless entitled to the new exemption.

Performing arts center tax exemption

(R.C. 5709.12 and 5709.121)

Under continuing law, real and tangible personal property belonging to a charitable or educational institution, the state, or a political subdivision of the state is exempt from taxation if the property is used as a community or area center in which presentations in music, dramatics, the arts, and related fields are conducted for the purpose of fostering public interest and education in the performing arts. The act specifies that such property continues to be exempt from taxation even if it is conveyed through a single conveyance or a series of conveyances to an entity that is not a charitable or educational institution, the state, or a political subdivision. However, the exemption continues to apply only if all of the following conditions are satisfied:

(1) The property has been listed as exempt on the county auditor's tax list and duplicate for the county in which it is located for the ten tax years immediately preceding the year in which the property is conveyed;

(2) The owner to which the property is conveyed leases the property, through one lease or a series of leases, to (a) the entity that owned or occupied the property for the ten tax years immediately preceding the year in which the property is conveyed or (b) an affiliate of that prior owner or occupant;

(3) The property includes improvements that are at least 50 years old;

(4) The property is being renovated in connection with a claim for historic preservation tax credits available under federal law;

(5) The property continues to be used for the performing arts; and

(6) The property is certified by the United States Secretary of the Interior as a "certified historic structure" or is certified as being part of a certified historic structure.

Under continuing law, applications to exempt property from taxation must be filed with the tax commissioner by the owner of the property (R.C. 5715.27 (not in the act)). With respect to property that satisfies the six criteria for exemption described above, the act permits either the owner of the property or its occupant to file an application for exemption from taxation.

V. Sales and Use Taxes

Rate change

(R.C. 5739.02(A), 5739.025, 5739.10, and 5741.02(A))

Am. Sub. H.B. 95 of the 125th General Assembly temporarily increased state sales and use taxes from 5% to 6%. The temporary increase applied to sales occurring on and after July 1, 2003, but before July 1, 2005. Under prior law, the rate was scheduled to return to 5% on July 1, 2005.

The act establishes a permanent sales and use tax rate of 5½%, beginning July 1, 2005. This rate also applies to the vendors' excise tax for the privilege of engaging in the business of making retail sales on and after July 1, 2005. To reflect the tax rate change, the act revises the tax rate schedules that specify how the tax is applied to fractions of dollars when sales are not in exact dollar amounts.



Temporarily maintain the 0.9% discount for vendors and sellers

(R.C. 5739.12)

For promptly filing sales and use tax returns and paying those taxes, continuing law gives vendors and sellers a 0.9% discount of the amount shown to be due on their returns. That discount rate was scheduled to be reduced to 0.75%, beginning July 1, 2005.

The act maintains the discount at the rate of 0.9%, until July 1, 2007, when it becomes 0.75%.

Overview of the Streamlined Sales and Use Tax Agreement and changes made to conform to it

Since 2002, Ohio has been required by state law to participate in multi-state discussions to develop and finalize a voluntary, streamlined system for the collection of sales and use taxes from remote sellers. Ohio was one of the implementing states to develop the system through a Streamlined Sales and Use Tax Agreement (the Agreement), which provides states with the structure for simplifying their sales and use tax collection systems by changing state statutes to establish the systems. The Agreement provides that any state that becomes a member to the Agreement is authorized to collect taxes from remote sellers that have voluntarily registered with the central electronic registration system established under the Agreement. The Agreement requires that states bring their laws, rules, regulations, and policies into substantial compliance with each of its provisions in order to become a member state.

On November 12, 2002, the implementing states approved the Agreement, and subsequently amended it April 16, 2005. The act contains changes that help to bring Ohio's law into substantial compliance with each provision of the Agreement.

Sourcing multiple points of use sales; sales of direct mail

(R.C. 5739.033)

Recent revisions to the Agreement changed the manner in which sales of digital goods, computer software, or services used in business are sourced when they are used in more than one taxing jurisdiction (multiple points of use) and the consumer does not hold a direct payment permit. The act adopts those changes by providing that a business consumer that purchases a digital good, computer software (except software received in person by a business consumer at a vendor's place of business) or a service, and that knows those items will be concurrently available for use in more than one taxing jurisdiction, must deliver to the vendor



an exemption certificate claiming multiple points of use or must work with the vendor to produce a correct apportionment of the sale to the proper taxing jurisdiction. The act designates when the vendor is responsible for collecting and remitting sales and use taxes or when the business consumer must pay the tax directly to the state.

The act also clarifies what type of form should be used for direct mail sales when the consumer is not a holder of a direct payment permit.

The act revises how leases or rentals of tangible personal property requiring recurring periodic payments must be sourced, to comply with the sourcing terms of the Agreement.

These changes took effect July 1, 2005.

Administering exempt sales under the Agreement

(R.C. 5739.03 and 5741.02(E))

The act revises the exemption certificate law so that it conforms to the Agreement, beginning January 1, 2006. The act relieves a vendor from liability for collecting and paying sales and use taxes if the vendor obtains a fully completed exemption certificate from a consumer, except in circumstances in which the vendor:

- (1) Fraudulently fails to collect the tax;
- (2) Solicits consumers to participate in the unlawful claim of an exemption;
- (3) Accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in Ohio, and Ohio has posted to its website an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available;
- (4) Accepts an exemption certificate from a consumer who claims a multiple points of use exemption under the sourcing law, if the item purchased is tangible personal property, other than prewritten computer software.

The act further provides that, when claiming a sales or use tax exemption under the law that exempts building and construction materials and services sold to a construction contractor for incorporation into otherwise exempt real property, the contractor must obtain certification of a claimed exemption from a contractee,



in addition to the exemption certificate provided by the contractor to the vendor. A contractee that provides a certification is deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification must be in such form as the Tax Commissioner prescribes.

Change to the statute of limitations for assessing sales or use taxes

(R.C. 5739.16 and 5741.16)

Beginning January 1, 2006, the act extends the statute of limitations for making sales or use tax assessments against consumers whose exemption certificates have been denied. Continuing law provides that no assessment can be made for state or local sales or use taxes more than four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for such period was filed, whichever date is later.

The act provides that a consumer who provides a fully completed exemption certificate may be assessed any state or local sales or use tax that results from denial of a claimed exemption within the later of the period established by continuing law or one year after the date the certificate was provided.

Medical equipment definitions and exemptions

(R.C. 5739.01(HHH) and (III) and 5739.02(B)(18))

Continuing law defines "durable medical equipment" and "mobility enhancing equipment." The act clarifies the definitions to conform them with the definitions in the Agreement. Although the definition of these terms are the same as in the Agreement, the act provides that the definitions are mutually exclusive of each other, a specification that is made under the Agreement.

Former law exempted from sales and use taxation sales of drugs for a human being, dispensed pursuant to a prescription; hospital beds when purchased for use by persons with medical problems for medical purposes; and medical oxygen and medical oxygen-dispensing equipment when purchased for use by a person with medical problems for medical purposes. The act limits the exemptions so that sales of drugs for a human being are exempt when they may be dispensed only pursuant to a prescription, and so that sales of hospital beds and medical oxygen and medical oxygen-dispensing equipment are exempt only when purchased by hospitals, nursing homes, or other medical facilities.

Revisions to the definition of "price"; tax treatment of "bundled transactions"

(R.C. 5739.01(H) and 5739.012)

To conform with the April 16, 2005, amendments to the Agreement, the act amends the definition of "price" to address the sales and use tax treatment of coupons or discounts, third party payments, and discounts offered under automobile manufacturing employee vehicle purchases.

The act also enacts a new law regarding the tax treatment of bundled transactions that was also in the amendments to the Agreement. The act defines "bundled transaction," which, in general, is the retail sale of two or more products where the products are otherwise distinct and identifiable products and are sold for one non-itemized price. The act establishes how the price of a bundled transaction is determined and how the transaction is taxed when taxable and exempt products are bundled in a sale.

These changes take effect January 1, 2006.

Telecommunications definitions and sourcing requirements

(R.C. 5739.01(B)(3)(f) and (p), (H)(4), and (AA), 5739.02(B)(46) and (47), 5739.034, 5739.035, and 5739.17)

The act adopts the Agreement's definition of "telecommunications service" and the definitions for numerous types of telecommunications services, including "900 service," "prepaid wireless calling service," "value-added non-voice data service," and "private communication service."

The act exempts from sales and use taxes sales by a telecommunications service vendor of 900 service to a subscriber, and sales of value-added non-voice data service.

The act establishes sourcing requirements for private communication service, and clarifies sourcing of prepaid wireless calling service.

Timing of the adoption of resolutions for county permissive sales tax levies

(R.C. 5739.026)

The Agreement requires that member states change local tax rates only on the first day of a calendar quarter after a minimum of 60 days' notice to vendors and sellers. Ohio law requires a board of county commissioners to give the Tax

Commissioner 65 days' notice before the day a rate change is to become effective, so that the Commissioner may report the change accordingly. But this notice requirement creates a problem if a resolution levying or changing the tax is adopted without submitting it to the electors of the county. That type of resolution is subject to referendum, and the tax rate change would not go into effect unless the referendum is defeated at the next election.

The act provides that county permissive tax levy changes that are not emergency levies and are not placed on the ballot by a board of county commissioners must be adopted by resolution at least 120 days prior to the date on which the tax or the increased rate of tax is to go into effect. This time period allows the referendum petition process to be completed without affecting the Agreement's notice requirements. This change takes effect January 1, 2006, and applies to resolutions adopted under R.C. 5739.026, but not those adopted under R.C. 5739.021.

County license fee reimbursement

(R.C. 5739.17)

Continuing law provides that the Tax Commissioner may establish a registration system whereby a vendor may pay \$25 to the Commissioner, rather than a county, and obtain a vendor's license. The system was added to Ohio law because the Agreement requires that it be made available to remote vendors. The Tax Commissioner issues the license and forwards a copy of the application and the license fee to the county auditor of the county in which the vendor desires to engage in business.

The act establishes the mechanism for returning the fees to the counties. License fees must be deposited into the Vendor's License Application Fund, which is created in the state treasury. The Commissioner must certify to the Director of Budget and Management within ten business days after the close of a month the license fees that will be transmitted to each county from the Fund for vendor's license applications received by the Commissioner during that month. When a license fee is transmitted to a county, but is not received by the Commissioner, for example, when an electronic transfer fails, the fee may be netted against a future distribution to that county, including distributions of sales taxes made each month to the county under existing law.

Transmission to the Treasurer of State of sales and use taxes collected by court clerks upon issuing certificates of title

(R.C. 1548.06 and 4505.06)

Under continuing law, applications for certificates of title for motor vehicles, watercraft, and watercraft outboard motors are filed with the clerks of the courts of common pleas, and the clerks are required to collect unpaid sales and use taxes from the applicants at the time the applications are filed. The clerks retain a poundage fee for collecting the taxes. Under prior law, the clerks were required to forward the taxes collected by them to the Treasurer of State in a manner prescribed by the Tax Commissioner.

The act establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by the court clerks. The act provides that the clerks are to transmit sales and use taxes resulting from sales of motor vehicles, off-highway motorcycles, all-purpose vehicles, and titled watercraft and outboard motors during the week to the Treasurer on or before the Friday following the close of that week. If, on any Friday, the offices of a court clerk or the state are closed, the tax must be forwarded to the Treasurer on or before the next day on which the offices are open. Every remittance of tax made by a clerk must be accompanied by a remittance report. The Tax Commissioner is to determine the form of this report. Upon receiving a tax remittance and report, the Treasurer is required to date stamp the report and forward it to the Tax Commissioner. The Treasurer may require the court clerks to transmit tax collections and remittance reports electronically.

If the tax due for any week with respect to titled watercraft and outboard motors is not remitted by a court clerk in accordance with the procedures outlined in the act, the clerk must forfeit the poundage fees collected by the clerk for sales made during that week. If the tax due for any week with respect to motor vehicles, off-highway motorcycles, and all-purpose vehicles is not remitted by a court clerk in accordance with the act's procedures, the Tax Commissioner may require the clerk to forfeit the poundage fees collected by the clerk for sales made during that week.

Sales of investment metal bullion and coins subject to sales and use taxes

(R.C. 5739.02(B)(35); Section 612.69.06)

Prior law exempted sales of investment metal bullion and investment coins from sales and use taxes. The act repeals the exemption, effective July 1, 2005, thus making sales of investment metal bullion and investment coins subject to sales and use taxes. "Investment metal bullion" was defined as any elementary



precious metal (such as gold, silver, or platinum) that has been put through a smelting or refining process and that is in such a state that its value depends upon its content and not upon its form. (Sales of fabricated precious metal that has been processed or manufactured for specific and customary industrial, professional, or artistic uses thus was not exempted by prior law from sales and use taxes.) "Investment coins" were defined as numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the law of the United States or a foreign nation that have a fair market value greater than any statutory or nominal value.

VI. Kilowatt-hour and Natural Gas Consumption Taxes

The kilowatt-hour (kWh) tax

Elimination of the trigger for reducing revenues credited to GRF

(R.C. 5727.84(B)(6) and (7))

Under prior law, if, in fiscal years 2002 to 2006, kilowatt-hour (kWh) tax revenues were less than \$552 million, the amount credited to the General Revenue Fund (GRF) would have been reduced by the amount necessary to credit to the Local Government Fund (LGF) and Local Government Revenue Assistance Fund (LGRAF) the amount each would have received if the tax did raise that amount in the fiscal year. Beginning in fiscal year 2007, if the tax revenues were less than \$552 million, prior law required that the amount credited to the GRF be reduced by the amount necessary to credit to the LGF, the LGRAF, and two property tax replacement funds²⁶⁸ the amount each fund would have received if the tax did raise that amount in the fiscal year.

The act removes this trigger so that, regardless of the amount of revenues raised by the kWh tax, no reduction in the amount credited to the GRF will occur, and the other funds will not be credited for any shortfall.

²⁶⁸ *The two funds, the School District Property Tax Replacement Fund and the Local Government Property Tax Replacement Fund, were created to reimburse local taxing units for the reduction in some public utility property tax assessments pursuant to deregulation.*

The natural gas consumption tax

Elimination of the threshold for transferring GRF moneys to other funds

(R.C. 5727.84(C)(3))

Under prior law, if, beginning in fiscal year 2007, natural gas consumption tax (mcf tax) revenues were less than \$90 million, an amount equal to the difference between the amount collected and \$90 million would have been transferred from the General Revenue Fund (GRF) to the School District Property Tax Replacement Fund and the Local Government Property Tax Replacement Fund in the same percentages as if that amount had been collected as mcf taxes. The Tax Commissioner was required to certify to the Director of Budget and Management the amounts to be transferred.

The act eliminates this threshold so that no revenues will be transferred from the GRF to either of the other funds, regardless of the amount of mcf taxes collected.

VII. Cigarette Taxes

Sale, distribution, and taxation of cigarettes

Cigarette tax

(R.C. 5743.02 and 5743.32)

Under prior law, an excise tax is levied on the sale, use, consumption, or storage in this state of cigarettes at the rate of 27.5 mills per cigarette. The act increases the tax to 62.5 mills per cigarette. A "mill" is equal to one-tenth of one cent. Accordingly, 10 mills equals one cent, 27.5 mills equals 2.75¢, and 62.5 mills equals 6.25¢. So, an excise tax of 62.5 mills per cigarette equates to a tax of \$1.25 on a package of cigarettes containing 20 cigarettes. The increase took effect July 1, 2005.

"Floor tax" on cigarette inventories

(Section 557.06)

The act requires wholesale dealers to pay the "net additional tax" resulting from the act's increase in the cigarette tax, less the dealer discount, on stamped cigarettes and unaffixed Ohio tax stamps in their possession on July 1, 2005, the date on which the tax increase took effect. For retail dealers, the "net additional tax" is the net additional tax resulting from the act's increase in the cigarette tax due on all packages of Ohio stamped cigarettes and on all unaffixed Ohio cigarette

tax stamps that a retail dealer has on hand as of the beginning of business on July 1, 2005.

In addition to filing a cigarette tax return, each wholesale dealer and each retail dealer must file a return on forms prescribed by the Tax Commissioner showing the net additional tax due and any other information the Commissioner needs to administer the tax. On or before September 30, 2005, each wholesale dealer and retail dealer must deliver the return to the Treasurer of State, together with payment of the net additional tax due. A wholesale or retail dealer may claim a credit of 5% of the net additional tax if the dealer delivers the return on or before August 15, 2005, together with the net additional tax minus the dealer credit. The Treasurer of State must stamp or otherwise mark on the return the date on which the return and payment were received, and show on the return by stamp or otherwise the amount of the tax payment remitted with the return. Upon receipt, the Treasurer of State must immediately transmit all returns to the Tax Commissioner.

A dealer who fails to file a return or pay the net additional tax must pay a late charge of \$50 or 10% of the net additional tax due, whichever is greater. Interest accrues on net additional tax that is not timely paid. Unpaid or unreported net additional taxes, late charges, and interest may be collected by assessment.

Unstamped cigarettes prohibitions: quantity basis rather than value basis

(R.C. 5743.10, 5743.111, and 5743.112)

Current law prohibits the possession of or trading in cigarettes above a certain threshold value without the cigarette packages bearing tax stamps or other proper indications that the tax has been paid. The prohibitions are expressed in terms of the wholesale value of cigarettes. Any person is prohibited from possessing unstamped cigarettes with a wholesale value exceeding \$60. Any person is prohibited from shipping, transporting, delivering, distributing, or otherwise trading in unstamped cigarettes with a wholesale value exceeding \$60.

The act expresses the same prohibitions in terms of the number of unstamped cigarettes instead of the wholesale value of unstamped cigarettes. Instead of more than \$60 wholesale value, the threshold number of cigarettes is established at 1,200.

The act also broadens an existing prohibition against a retail dealer possessing any quantity or value of unstamped cigarettes by applying the prohibition instead to any person.



Persons subject to Ohio laws governing sale, distribution, and taxation of cigarettes

(R.C. 5743.01)

The act exempts certain persons from the laws governing the sale, distribution, and taxation of cigarettes in Ohio. Specifically, the act provides that the "wholesale dealers" to which those laws apply do not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer possessing a valid federal permit to conduct that business if the person sells cigarettes in Ohio only to (1) a wholesale dealer holding a valid and current Ohio license to traffic in cigarettes or (2) an export warehouse proprietor or another manufacturer.

The act specifies that the class of retail dealers subject to Ohio's cigarette laws includes every person, other than a wholesale dealer, engaged in the business of selling cigarettes in Ohio, regardless of whether the person is located in Ohio or elsewhere. Accordingly, the act provides, further, that, for purposes of Ohio's cigarette laws, a "sale" of cigarettes includes (rather than excludes) transactions in interstate or foreign commerce.

The act defines a cigarette "importer" as any person that is authorized under a valid federal permit to directly or indirectly import finished cigarettes into the United States.

Tax stamps

(R.C. 5743.03, 5743.031, and 5743.05)

The cigarette tax is paid by the purchase of cigarette tax stamps, which are affixed to packages of cigarettes. The act specifies that a wholesale dealer may affix tax stamps only to packages of cigarettes that the dealer received directly from a manufacturer or importer of cigarettes that possesses a valid and current Ohio license to traffic in cigarettes. However, a wholesale dealer may affix tax stamps to packages of cigarettes that the dealer received directly from another licensed wholesale dealer if the Tax Commissioner has authorized the sale of the cigarettes between those wholesale dealers and the wholesale dealer that sold the cigarettes received them from a manufacturer or importer that possesses a valid and current Ohio license to traffic in cigarettes.

The act provides that only a wholesale dealer that possesses a valid Ohio license may purchase or obtain tax stamps. A wholesale dealer may not sell or provide tax stamps to any other wholesale dealer or to any other person. Accordingly, the act requires wholesale dealers, and not also retail dealers, to affix the tax stamps to packages of cigarettes if they have not been previously affixed.

Retail dealers are merely to inspect packages of cigarettes upon receipt and before sale to ensure the tax stamps have been affixed. Only wholesale dealers, and not also retail dealers, therefore are required to make a semiannual cigarette tax return.

Under the act, any person shipping unstamped packages of cigarettes into Ohio to a person other than a licensed wholesale dealer must, before shipping the cigarettes, file notice of the shipment with the Tax Commissioner. The person transporting the unstamped cigarettes into or within Ohio must carry in the vehicle used to transport the cigarettes invoices or other equivalent documentation of the shipment. The invoices or other equivalent documentation must cover all cigarettes in the shipment, and must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity of cigarettes being transported. However, this requirement does not apply to any common or contract carrier transporting cigarettes through Ohio to another location under a proper bill of lading or freight bill that states the quantity, source, and destination of the cigarettes.

Records pertaining to cigarette sales and purchases

(R.C. 5743.071)

Under continuing law, every wholesale dealer and retail dealer must maintain complete and accurate records of purchases and sales of cigarettes, and must procure and retain all invoices, bills of lading, and other documents relating to purchases and sales of cigarettes. The act extends these record-keeping duties to manufacturers and importers. The act provides, further, that the invoices or documents must be maintained for each place of business and must show the name and address of the other party to the sale or purchase, and must show the quantity of the cigarettes sold or purchased.

With the Tax Commissioner's consent, a person with multiple places of business may keep centralized records. However, that person must transmit duplicates of the invoices or documents to each place of business within 72 hours after the Commissioner requests access to the records.

Manufacturer and importer reports

(R.C. 5743.072)

The act requires that each manufacturer and each importer shipping cigarettes into or within Ohio file a monthly report with the Tax Commissioner in accordance with rules adopted by the Commissioner.

Seizure and forfeiture of cigarettes

(R.C. 5743.08)

Under continuing law, when the Tax Commissioner discovers that cigarette taxes have not been paid on cigarettes, the Commissioner may seize and take possession of the cigarettes. The act provides that this authority extends not only to cigarettes for which taxes have not been paid, but to any cigarettes that are being or have been shipped, or transported, or that are held for sale or distribution, in violation of any of Ohio's cigarette laws.

Tax Commissioner's and peace officers' inspection powers

(R.C. 5743.14)

Prior law granted the Tax Commissioner general authority to inspect any place where cigarettes are sold or stored, and prohibited any person from preventing or hindering the Tax Commissioner from making a full inspection of such a place or a full inspection of records required to be kept by the cigarette tax law. The act specifies that these inspections may be conducted by the Commissioner or the Commissioner's agents and that the Commissioner's inspection authority includes a right to enter and extends to the "facilities" and records of manufacturers, importers, wholesale dealers, and retail dealers. The act provides, further, that the inspection must be conducted pursuant to a properly issued search warrant, but only if it is conducted outside normal business hours. An inspection does not require a search warrant if it is conducted during normal business hours. In this regard, the act generally prohibits any person from preventing or hindering the Commissioner or the Commissioner's agents from carrying out inspections under the inspection authority it grants.

The act authorizes a peace officer to stop and inspect any vehicle that the officer knows or has reasonable cause to believe is illegally transporting cigarettes or other tobacco products, to determine the presence of those cigarettes or tobacco products.

Licenses to traffic in cigarettes

(R.C. 5743.15, 5743.18, and 5743.19)

Continuing law requires that wholesale and retail businesses wishing to engage in the trafficking of cigarettes in Ohio first obtain a license to do so from the county auditor of the county in which the wholesaler or retailer wishes to conduct business. The act extends this licensing requirement to manufacturers and importers.

To obtain a license, a manufacturer or importer must, annually, on or before the fourth Monday in May file with the Tax Commissioner, on a blank furnished by the Commissioner, a statement showing the applicant's name, the nature of the applicant's business, and any other information required by the Commissioner. If the manufacturer or importer is a firm, partnership, or association other than a corporation, it must state the name and address of each of its members. If the manufacturer or importer is a corporation, it must state the name and address of each of its officers. A license issued by the Commissioner is valid for one year.

The act provides that the Commissioner's issuing of a license to a manufacturer does not excuse the manufacturer from filing the annual certification that continuing law requires be filed by tobacco product manufacturers (R.C. 1346.05). A manufacturer's annual certification certifies that the manufacturer is in full compliance with the Master Settlement Agreement entered into between the state and leading manufacturers of tobacco products in settlement of litigation pertaining to the negative health effects of tobacco product use. Continuing law requires that the Attorney General maintain a directory on its web site listing manufacturers who have provided current and accurate certifications. The act declares that any license issued to a manufacturer that is not listed in the Attorney General's directory ceases to be valid and is to be revoked by the Tax Commissioner.

The act grants the Tax Commissioner authority to adopt rules necessary to administer the licensing of manufacturers and importers.

The act also requires firms, partnerships, and associations other than corporations that apply for a wholesaler's or retailer's license to state on their applications the name and address of each of their members. Likewise, corporate wholesale or retail applicants must state the name and address of each of their officers.

Authorized sales

(R.C. 5743.20)

Continuing law specifies that wholesale dealers may not sell cigarettes to any person in Ohio other than a licensed retail dealer. The act adds an exception in the case of a licensed wholesale dealer who receives cigarettes directly from a licensed manufacturer or licensed importer and who, with the Tax Commissioner's permission, sells them to another licensed wholesale dealer. The act requires that the Commissioner adopt rules governing these wholesaler to wholesaler sales, including rules establishing criteria for authorizing the sales.



The act also specifies that a retail dealer may not purchase cigarettes from any person other than a licensed wholesale dealer. In addition, the act provides that a manufacturer or importer may not sell cigarettes to another person in Ohio other than to a licensed wholesale dealer or licensed importer. An importer is not permitted to purchase cigarettes from any person other than a licensed manufacturer or licensed importer.

The act prohibits a retail dealer from purchasing tobacco products other than cigarettes from any person other than a licensed distributor. And a licensed distributor is prohibited from selling tobacco products to anyone other than a retail dealer. However, the act provides an exception in the case of a licensed distributor who receives tobacco products directly from a manufacturer or importer of tobacco products and who, with the Tax Commissioner's permission, sells them to another licensed distributor. The act permits the Commissioner to adopt rules governing these distributor-to-distributor sales, including rules establishing criteria for authorizing the sales.

The act provides that the identities of licensed distributors are subject to public disclosure. The Tax Commissioner must maintain an alphabetical list of distributors, post the list on a web site on the Internet that is accessible to the public, and periodically update the posting.

"Authorized recipients of tobacco products"

(R.C. 2927.023)

For the purpose of preventing the sale of cigarettes to minors and ensuring compliance with the Master Settlement Agreement,²⁶⁹ the act makes each of the following a criminal offense punishable by a fine of up to \$1,000 for each violation:

(1) For any person to cause any cigarettes to be shipped to any person in Ohio other than an authorized recipient of tobacco products.

(2) For a common carrier, contract carrier, or other person knowingly to transport cigarettes to any person in Ohio that the common carrier, contract carrier, or other person reasonably believes is not an authorized recipient of tobacco products.

(3) For any person who is engaged in the business of selling cigarettes and who ships or causes cigarettes to be shipped to any person in Ohio in any

²⁶⁹ For a description of the "Master Settlement Agreement," see "Licenses to traffic in cigarettes," above.

container or wrapping other than the original container or wrapping to fail to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the word "cigarettes."

For purposes of (2), above, if cigarettes are transported to a home or residence, it is presumed that the common carrier, contract carrier, or other person knew that the person to whom the cigarettes were delivered was not an authorized recipient of tobacco products.

The act defines each of the following as being "authorized recipients of tobacco products":

- (1) A licensed cigarette wholesale dealer;
- (2) A licensed distributor of tobacco products;
- (3) An export warehouse proprietor;
- (4) An operator of a customs bonded warehouse;
- (5) An officer, employee, or agent of the federal or state government acting in the person's official capacity;
- (6) A department, agency, instrumentality, or political subdivision of the federal or state government;
- (7) A person having a consent for consumer shipment issued by the Tax Commissioner (see "*Consent for consumer shipment*," below).

Consent for consumer shipment

(R.C. 5743.71)

The act permits a person to apply to the Tax Commissioner for a "consent for consumer shipment" of cigarettes into Ohio if the cigarettes sought by the applicant are legal for sale in Ohio and are not reasonably available to the applicant at a retail location in Ohio. A consent for consumer shipment must be obtained before any cigarettes are purchased for shipment into Ohio.

The applicant must file the consent for consumer shipment with the Tax Commissioner "on" a form, which is prescribed by the Commissioner, showing purchase of the cigarettes as consented to, proof of the purchaser's age, and any other information required by the Commissioner.

Use tax exemption for cigarettes

(R.C. 5741.02(C)(9))

The act exempts cigarettes a person uses, stores, or consumes in Ohio from the use tax, up to \$300 worth per month (wholesale value). The exemption does not apply if the cigarettes are used or stored for resale. In effect, the exemption permits a person to purchase up to \$300 worth of cigarettes outside Ohio and bring them back into Ohio without incurring any legal liability for use tax. No use tax report needs to be filed for such cigarettes. Generally, cigarettes, like other goods, brought into the state are subject to the use tax. (The act has a similar exemption from the cigarette excise use tax, explained immediately below.)

Cigarette excise use tax exemption for cigarettes

(R.C. 5743.33 and 5743.331)

The act exempts cigarettes a person uses, stores, or consumes in Ohio from the cigarette excise use tax, up to \$300 worth per month (wholesale value). The exemption does not apply if the cigarettes are used or stored for resale. In effect, the exemption permits a person to purchase up to \$300 worth of cigarettes outside Ohio and bring them back into Ohio without incurring any legal liability for the cigarette excise use tax. No excise tax report needs to be filed for such cigarettes. Generally, cigarettes brought into the state are subject to the cigarette excise use tax. (The act has a similar exemption from the general use tax, explained immediately above.)

Transportation of untaxed cigarettes

(R.C. 5743.33)

Prior law prohibited transporting within the state untaxed cigarettes having a wholesale value greater than \$60 without the prior consent of the Tax Commissioner. The act prohibits transporting within Ohio untaxed cigarettes having a wholesale value greater than \$300 without the Commissioner's prior consent.

VIII. Other Taxation Provisions

Local Government Funds

(Section 557.12)

The act changes the amount of state tax revenue credited to the three state-local revenue sharing funds, and thus the amount of revenue available for



distribution to counties, municipal corporations, townships, public library systems, and other special-purpose subdivisions receiving revenue sharing payments. The revenue sharing funds involved are the Local Government Fund (LGF), the Local Government Revenue Assistance Fund (LGRAF), and the Library and Local Government Support Fund (LLGSF).

Permanent law

Under permanent law provisions that have been suspended since the beginning of fiscal year 2002, each of the funds was credited with a percentage of the state's major tax sources, including the income tax, sales and use tax, corporation franchise tax, public utility excise tax, and kilowatt-hour (kWh) tax. Under those suspended provisions, the LGF would have received 4.2% of revenue from those taxes (except the kWh tax) and the LGRAF would have received 0.6%; the LLGSF would have received 5.7% of the income tax. After the percentage of revenue was credited to those funds, the remaining revenue was credited to the state's General Revenue Fund (GRF). Beginning with fiscal year 2002, the percentages were suspended to reserve more of the revenue for the GRF. The revenue credited to the LGF, LGRAF, and LLGSF was fixed or "frozen" at their respective fiscal year 2001 levels.

Money in the LGF is distributed among counties, townships, municipal corporations (cities and villages), and some other special-purpose subdivisions (e.g., park districts) under a three-stage system. At the first stage, LGF money is divided into a municipal share (for municipal corporations levying an income tax) and a share for all subdivisions in a county participating in the county's LGF distribution. Under the "permanent" distribution formula as it operated before FY 2002, slightly less than 10% of the LGF was set aside for allocation only to municipal corporations levying an income tax, and the remaining 90% or so was allocated among all participating subdivisions in a county (including municipal corporations levying an income tax). This remaining subdivision allocation was then distributed under one of two formulas, with the formula yielding the higher payment for a county being applied to that county. Under either formula, the 90% subdivision share was divided into fourths, with three-fourths distributed in proportion to municipal taxable property value in the county and one-fourth distributed in proportion to county population. One formula added a third factor: the county's 1983 deposits tax revenue. Until 1983, counties received revenue from a tax on deposits held in the county at the rate of 1-3/8 mills per dollar of deposits. This second LGF formula ensured that each county received 145.45% of its 1983 deposits taxes (145.45% represents what the revenue would be if the deposits tax had been levied at a rate of two mills). The total of the counties' deposit tax portion was deducted from the counties' approximately 90% share of the LGF, and an additional \$6 million was deducted. The remaining amount was



then divided into fourths, with three-fourths distributed in proportion to municipal taxable property value in each county and one-fourth distributed in proportion to county population, as in the first formula.

The minimum distribution under either formula (disregarding the deposits tax portion) was \$225,000 per county. Each county's share of the LGF was the higher of the two formula computations. The shares of all the counties were added together, and each county's amount was divided into the total to yield the county's percentage of the total county part of the LGF. There was a hold-harmless guaranteeing each county at least the amount it received in 1983.

In addition to a county's formula amount, each county receives five mills' worth of the eight-mill state tax on dealers in intangibles originating from dealers in that county (except certain dealers that are subsidiaries of financial institutions); this five-mill portion of the distribution is not affected by the act. The sum of the formula amount and the five mill portion is then apportioned among the county and the townships, municipal corporations, and some special-purpose districts in the county. In almost all counties, the apportionment is based on a formula negotiated under the supervision of the county budget commission. In a few counties, the apportionment follows the statutory method, which apportions on the basis of relative "need" as defined by state law. Generally, need is measured by a subdivision's expenditures less its locally generated revenue.

The approximately one-tenth of the LGF allocated for municipal corporations levying an income tax is distributed in proportion to each municipal corporation's relative municipal income tax collections compared to total municipal income tax collections.

The pre-FY 2002 LGRAF distribution method was simpler than that of the LGF, and was based entirely on relative county populations. Each county received a percentage of the LGRAF equal to the county's percentage of Ohio's population. LGRAF distributions have been more or less frozen since the beginning of FY 2002.

The pre-FY 2002 LLGSF was distributed among counties for further distribution primarily to library systems in the county under a formula that essentially replaced the repealed intangible property tax revenue (repealed in 1986) and allowed for growth from that base amount on both an overall basis and on a per-capita basis. LLGSF distributions have been more or less frozen since the beginning of FY 2002.



Act's treatment of LGF, LGRAF, and LLGSF

LGF and LGRAF

Crediting of state revenue to LGF and LGRAF. The act establishes for fiscal years 2006 and 2007 a new scheme for crediting state revenue to the LGF and LGRAF.

With respect to amounts credited to LGF and LGRAF from *corporate franchise tax* and *sales and use tax* revenues, the act freezes those amounts at fiscal year 2005 levels. With respect to the *personal income tax* revenues credited to the funds, the act's formula freezes those amounts also at the fiscal year 2005 levels and provides for a possible reduction in the credited amounts under certain circumstances (discussed below).

With respect to the amounts credited to LGF and LGRAF from *public utility excise tax* revenues, the act credits amounts for fiscal years 2006 and 2007 as expressed in the following chart:

Fiscal years 2006 and 2007 LGF		Fiscal years 2006 and 2007 LGRAF	
July \$0	January \$0	July \$0	January \$0
August \$0	February \$454,520.77	August \$0	February \$64,931.53
September \$0	March \$2,357,987.57	September \$0	March \$336,855.37
October \$2,361,127.85	April \$0	October \$337,303.98	April \$0
November \$313,719.33	May \$990,215.47	November \$44,817.05	May \$141,459.35
December \$363,012.50	June \$2,803,350.27	December \$51,858.94	June \$400,478.61

The numbers in the chart, other than those specifying zero amounts, represent the product of multiplying 30% times a specified amount and rounding to the nearest cent. The act uses the same specified amounts in the same months for the calculation of the credited amounts for the kilowatt-hour tax (below).

With respect to the amounts credited to LGF and LGRAF from the *kilowatt-hour tax* revenues, the act credits amounts for fiscal years 2006 and 2007 as expressed in the following chart:



Fiscal years 2006 and 2007 LGF		Fiscal years 2006 and 2007 LGRAF	
July \$0	January \$0	July \$0	January \$0
August \$0	February \$1,060,548.45	August \$0	February \$151,506.90
September \$0	March \$5,501,971	September \$0	March \$785,995.87
October \$5,509,298.31	April \$0	October \$787,042.61	April \$0
November \$732,011.78	May \$2,310,502.75	November \$104,573.11	May \$330,071.82
December \$847,029.17	June \$6,541,150.62	December \$121,004.19	June \$934,540.09

The numbers in the chart, other than those specifying zero amounts, represent the product of multiplying 70% times the specified amount for the month and rounding to the nearest cent.

With respect to crediting all the tax revenues described above, the act provides that if the amounts credited exceed what existing codified law would have credited, then the amounts of those taxes that are credited to the General Revenue Fund are to be reduced by that excess. If the amounts credited are less than what existing law would have credited, then the amounts of those taxes credited to the General Revenue Fund will be increased by an amount equal to the deficiency.

Additionally, the act also gives the Tax Commissioner authority to make adjustments to the credited amounts at the end of FY 2006 and FY 2007. Under this authority, the Commissioner is required to reduce the amount of income tax revenue credited to the LGF, LGRAF, or LLGSF if more money is credited to all of those funds under the provisions of the act than would have otherwise been credited under the provisions of the Revised Code governing the crediting of those funds. The amount subtracted from income tax revenue credited to any one of the funds must be equal to the proportion by which that specific fund contributed to the crediting of the amount in excess of the statutory credit. The Commissioner must subtract the appropriate amounts from the appropriate fund or funds by June 7 of each fiscal year. The act gives the Director of Budget and Management, on the advice of the Commissioner, authority to make reductions in amounts credited monthly to the three funds in order to accomplish more effectively the purposes of this reduction authority. If any such monthly reductions turn out to be too large, the Director may also credit to any of the funds any amount of the reductions that exceeds the amount that should have been reduced.

Distributions from LGF and LGRAF. The act freezes at FY 2005 levels the distributions from the LGF and LGRAF to each county's undivided local government fund and undivided local government revenue assistance fund. To this end, the act provides for distributions to be made from the LGF and LGRAF each month on the 10th day of the immediately succeeding month as follows:

- Each county undivided local government fund will receive the same percentage of the total LGF distribution that it received for each respective month of August 2004 to July 2005;
- Each county undivided local government revenue assistance fund will receive the same percentage of the total LGRAF distribution that it received for each respective month of August 2004 to July 2005;
- Each municipal corporation receiving a direct distribution from the LGF will receive the same percentage of the total LGF distribution that it received for each respective month of August 2004 to July 2005.

The act does not expressly provide for distributions to the various local governments of the amounts in the county undivided local government fund and county undivided local government revenue assistance fund for the FY 2006-2007 biennium. Because of the silence, it appears that codified law governing that distribution would apply. However, the act provides that no subdivision can receive a proportionate share from the county undivided local government fund or county undivided local government revenue assistance fund during the FY 2006-2007 biennium that is less than the proportionate share the subdivision received from that fund during FY 2005, unless the subdivision consents to receive the lesser proportionate share.

LLGSF

For the FY 2006-2007 biennium, monthly deposits into the LLGSF are equal to the previously frozen amounts for the corresponding month in the FY 2004-2005 biennium. In each month from August 2005 to July 2007, each county undivided fund will receive the same percentage of the LLGSF as it received in the respective month from August 2004 through July 2005. Distributions are then to be made to the county library systems from each county undivided fund in accordance with codified law (see discussion above).

Job retention tax credit

(R.C. 122.171)

Authority to enter into agreements for job retention tax credits extended

Under continuing law, Ohio's Tax Credit Authority may enter into agreements with employers whereby the employer undertakes to retain Ohio jobs through a "capital investment project" in exchange for a tax credit against the corporation franchise tax or personal income tax. Under prior law, the authority to enter into these agreements was scheduled to expire on June 30, 2007. The act permits the Ohio Tax Credit Authority to continue entering into the agreements after this date.

Job retention tax credit: capital investment projects

Continuing law defines a "capital investment project" for which a job retention tax credit may be granted as an investment plan for a project site for the acquisition, construction, renovation, or repair of buildings, machinery, or equipment, or for the capitalized cost of basic research and new product development. Eligibility for a job retention tax credit depends, in part, upon how much the employer has invested as part of the capital investment project. Under prior law, project costs paid after December 31, 2006, were not included in computing investments in a capital investment project. The act removes this restriction and makes project costs paid after that date part of the investments comprising a capital investment project.

Job creation tax credit

Overview of the job creation tax credit

(R.C. 122.17)

Under continuing law, Ohio's Tax Credit Authority may enter into an agreement with an employer whereby the employer agrees to increase employment in Ohio in exchange for a tax credit against the corporation franchise tax (corporations and financial institutions) or the income tax (owners of most partnerships, limited liability companies, S corporations, and sole proprietorships). The credit is equal to a percentage, determined by the Authority and detailed in the agreement, of new income tax revenue withheld from the compensation of the employer's new employees. The credit is refundable, which means that the employer is entitled to a refund if the amount of the credit exceeds the employer's tax liability. Currently, insurance companies cannot benefit from the credit.

Extension of the job creation tax credit to insurance companies

(R.C. 122.17, 5725.32, and 5729.032)

In lieu of the corporation franchise tax or income tax, domestic and foreign insurance companies pay annual franchise taxes at a rate of 1.4% of the gross amount of premiums received from policies covering risks within Ohio, except for those companies that are health insuring corporations, which are taxed at a rate of 1% of premium rate payments received. The Superintendent of Insurance administers this tax.

The act extends the job creation tax credit to domestic and foreign insurance companies by allowing these companies to claim the credit against their annual franchise taxes. Under the act, all of the existing administrative procedures relating to the job creation tax credit apply with respect to insurance companies, including the requirement that the Director of Development issue tax credit certificates to taxpayers who are eligible for the credit. The act specifies that insurance companies are to claim the credit for the tax reporting period indicated on the certificate. The act adds the Superintendent of Insurance to the tax credit's administrative procedures because the Superintendent administers the franchise tax on domestic and foreign insurance companies.

Estate taxes

Overview of the additional estate tax, generation-skipping tax, and the family-owned business deduction

Ohio's estate tax consists of four distinct levies: the basic tax, the additional estate tax, the generation-skipping tax, and the nonresident tax. The act addresses the additional estate tax and the generation-skipping tax in light of changes made in the federal estate tax law, which affects those two state taxes. The additional estate tax (R.C. 5731.18) is equal to the maximum credit allowed by federal estate tax law for paying state death taxes, while the generation-skipping tax (R.C. 5731.181) is equal to the federal credit for state taxes paid on generation-skipping transfers (of property to a person who is two or more generations below the transferor, such as from a grandparent to a grandchild). Both taxes, known as "sponge" taxes because they allow the state to absorb as much revenue from an estate as is permitted by the federal credits, are equal to the difference between state tax liability and the estate's federal credit. In effect, both sponge taxes allow Ohio to collect more tax from an estate without increasing the estate's combined federal/state tax liability, because federal tax liability is reduced by the amount of the additional estate tax and generation-skipping tax liability.

The act also addresses the family-owned business deduction because of revisions made to the federal estate tax law, which greatly affects this deduction. Federal law permits estates to avoid federal estate taxes on any part of the estate consisting of family-owned businesses inherited by or passed to family members. These family-owned business interests are deducted in computing the value of the estate that is subject to the federal estate tax. Ohio also has a deduction modeled closely after this federal deduction, for the value of a family-owned business (including a farm) when computing the Ohio estate tax, to the extent the business is passed on to other family members. The state deduction may be claimed only if the federal deduction is claimed against federal estate tax liability.

Federal changes that have affected the state estate tax law

The federal "Economic Growth and Tax Relief Reconciliation Act of 2001" (the "federal Act") phased out the federal credits for paying state death taxes and state generation-skipping transfer taxes. These credits no longer apply, respectively, to estates of decedents dying after December 31, 2004, or to generation-skipping transfers made after that date. Under the federal Act's sunset clause, the credits are scheduled to be restored to their current forms in 2011, assuming Congress does not intervene before that year and repeal or revise the credits.

The federal Act also suspended the federal deduction for family-owned business interests by providing that the deduction does not apply to estates of decedents dying after December 31, 2003. But, technically, the federal Act's sunset clause reinstates the deduction in 2011.

Constructive elimination of the additional estate tax and generation-skipping tax; repeal of the deduction for family-owned businesses

(R.C. 5731.01(F), 5731.14, 5731.18, and 5731.181; repeal of 5731.20; Section 557.24)

The act amends the additional estate tax and generation-skipping tax statutes by revising their references to the Internal Revenue Code (IRC), thereby incorporating changes made by the federal Act. For purposes of the entire state estate tax law, the act defines the "Internal Revenue Code" to be the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Under an Ohio Supreme Court decision, *State v. Gill*, 63 Ohio St.3d 53 (1992), updating Ohio statutory references to federal law incorporates changes in the federal law occurring since the most recent amendment of the Ohio statute. Therefore, updating references to the IRC in Ohio's two sponge tax statutes has the effect of incorporating the federal Act's phase-out of the federal credit for paying state death taxes and state generation-skipping taxes. In other words, the act

constructively repeals Ohio's additional estate sponge tax and the generation-skipping sponge tax for decedents dying on and after the act's immediate effective date (see below).

The act repeals outright the state estate tax deduction for family-owned businesses, because the federal Act revised federal law to suspend the federal deduction for family-owned business interests for estates of decedents dying after December 31, 2003.

These amendments and the repeal took effect immediately on the day the Governor signed the act.

Temporary tax credit

(Section 557.03)

The act grants a tax credit against the additional estate "sponge" tax to the estate of a decedent who dies on or after January 1, 2002, but before the effective date of the act's changes (see above). In effect, the credit retroactively gives those relatively few larger estates that are subject to the sponge tax the tax reduction they would have received if Ohio's law had reflected the phase-out of the federal credit for state estate taxes. Specifically, the credit equals the portion of the additional estate sponge tax that is over and above the sponge tax that would have been imposed if the tax had been equal to the maximum federal credit allowable for paying state estate taxes under the federal law that was in effect and applicable on the date of the decedent's death.

This credit took effect immediately on the day the Governor signed the act.

Estate tax penalty for late payments and filings; change to rate applied to overpayments and underpayments of the estate tax

(R.C. 5703.47, 5731.22, and 5731.23)

Under continuing law, failure to timely file an estate tax return and pay the tax within nine months following a decedent's death results in a penalty, with interest accruing on the unpaid balance. If the tax paid is more than the amount of tax ultimately found to be due, the estate is entitled to interest on the overpayment. The overpayment and interest must be refunded by the cities, villages, or townships that received the overpayment, as well as from the state's general revenue fund, on a pro rata basis. Interest accrues from nine months from the date of the decedent's death or the date the tax is paid, whichever is later, to the date the overpayment is refunded.



Interest

(R.C. 5731.23)

Under prior law, the rate of interest accruing on unpaid estate taxes, and paid on estate tax overpayments, was equal to three percentage points above the "federal short-term rate," which is a rate computed on the basis of an index of yields on short-term U.S. government securities.

The act reduces the rate of interest that accrues on unpaid estate taxes and on estate tax overpayments. Instead of accruing at the "statutory" rate equal to the federal short-term rate plus 3%, interest will accrue at just the federal short-term rate.

Penalties

(R.C. 5731.22)

Continuing law imposes a penalty for not filing an estate tax return on time equal to 5% of the tax due if the filing is made within one month of the due date. If the filing is more than one month late, an additional 5% is added for each additional month for up to four months, so the cumulative penalty cannot exceed 25% of the tax due. The penalty does not apply if the estate's representative shows that the late filing is due to reasonable cause and not willful neglect. If, however, failure to file the return or an underpayment of tax due is because of fraud, continuing law requires the Tax Commissioner to impose an additional penalty of up to \$10,000.

The Governor vetoed provisions in the act that would have changed the estate tax penalty so that it equals 10% of the unpaid tax regardless of how late the payment or filing occurs. The Governor also vetoed provisions that would have eliminated the up-to-\$10,000 additional penalty in cases of fraud.

Waiving penalties

Current law authorizes the Tax Commissioner to waive or "remit" the 5%-per-month penalty if an estate's representative shows that the late payment or filing is due to reasonable cause and not willful neglect.

The Governor vetoed provisions in the act that would have removed this remission authority from the Tax Commissioner and instead vested it in county auditors. Specifically, a county auditor would have remitted a penalty if the estate's representative applied for remission and showed that the lateness of the filing or payment was due to reasonable cause and not willful neglect. A county auditor would have remitted a penalty only after consulting with the county

treasurer. Once the county auditor decided whether to remit a penalty, the auditor would have been required to notify the estate's representative of the decision by mail. If remission were denied, the representative could have appealed the decision by applying to the Tax Commissioner, either in person or by certified mail, within 60 days after the auditor mailed notice of the decision. The Commissioner would have been required to consider the appeal and to determine whether the penalty should be remitted. Once the Commissioner decided the appeal, the Commissioner would have been required to notify the representative, the county auditor, and the county treasurer. The county auditor and county treasurer then would have been required to make any settlement and to correct accounts as necessitated by the Commissioner's decision. The estate representative who appealed to the Commissioner could have appealed the Commissioner's decision by filing an exception with the probate court having jurisdiction over the estate in the same manner in which exceptions may be filed under continuing law from other determinations by the Commissioner regarding the tax on the estate (see R.C. 5731.30).

The act would have authorized the Tax Commissioner to issue orders and instructions for uniform implementation of the act's remission provisions, and would have required county auditors and treasurers to follow those orders and instructions.

Additional amendments made to incorporate federal tax law changes

(R.C. 5731.01(B), (D), and (F), 5731.05(C)(3), and 5731.131(A) and (B))

The act also revises all other IRC references in the state estate tax law, with the effect of generally incorporating any applicable federal tax law changes made since the last time those state laws were amended. The actual effect of this incorporation is difficult to discern, but the substantive effect does not appear to be substantial.

These amendments took effect immediately on the day the Governor signed the act.

Technical correction

(R.C. 5731.23)

The act corrects a longstanding error in a statute governing estate tax payments. In 1971, Am. Sub. 413 of the 109th General Assembly, 134 Ohio Laws 821, 822-823, removed language regarding discounts for early estate tax payments, but failed to remove related language stating that early payments should

be paid on an estimated basis regardless of whether a return has been filed. The act removes this related language to correct the error.

Real estate assessment funds

(R.C. 325.31 and 5731.41)

Each county treasury has within it a real estate assessment fund, the moneys in which are used by a county to defray costs associated with administering various taxes. Continuing law sets forth the specific purposes for which a county may use moneys in the fund.

The act specifies that in addition to the purposes set forth in continuing law, counties may use moneys in real estate assessment funds to defray costs incurred in enforcing estate taxes. More specifically, the act permits a county to use moneys in its fund to defray costs incurred in compensating estate tax enforcement agents who, under continuing law, perform duties prescribed by the Tax Commissioner.

The act also authorizes the Tax Commissioner to appoint agents to administer real property and manufactured and mobile homes taxes as prescribed by the Commissioner. The act specifies that these agents, like estate tax enforcement agents, may be compensated from moneys in county real estate assessment funds.

Phase-out of the grain handling tax

(R.C. 5737.03)

Prior law levied an annual excise tax on each bushel of grain handled at one or more places in Ohio, in lieu of personal property taxes on the grain, at one-half mill per bushel for wheat and flax, and one-fourth mill per bushel for all other grain. Taxpayers reported the bushels of grain handled in a statement. The tax revenue was distributed to local taxing jurisdictions in proportion to the property tax rates levied by each jurisdiction.

The act phases-out the grain handling tax over two years. In 2006, the tax due is one-fourth mill per bushel for wheat and flax, and one-eighth mill per bushel for all other grain. No statement or tax is due in 2007 or any year thereafter. And any grain that would have been included in a statement for 2007 or any year thereafter is exempt from taxation as personal property.

Tax credits under the Ohio Venture Capital Program

(R.C. 150.07, 150.10, 5707.031, 5725.19, 5727.241, 5729.08, 5733.49, and 5747.80)

Credit extended to dealers in intangibles and public utilities

Under the continuing Ohio Venture Capital Program administered by the Ohio Venture Capital Authority, moneys in a "program fund" are invested in venture capital funds, which in turn invest in Ohio-based businesses that are in seed or early stages of development or established Ohio-based businesses that are developing new methods or technologies. The program fund is funded through investments from private investors. Some of the profits from the program are put into the Ohio Venture Capital Fund (OVCF), which is used to secure the private investors against losses. To the extent the moneys in the OVCF are not adequate to secure an investor against losses, the investor is eligible for a tax credit granted by the Authority. Taxpayers may elect to receive a refundable or a nonrefundable tax credit. Eligibility for a tax credit is evidenced by a tax credit certificate issued by the Authority.

Under prior law, the Authority was authorized to approve tax credits against only the income tax, corporation franchise tax, and insurance company franchise taxes. The act authorizes the Authority to approve credits against two additional existing taxes: the tax levied on qualifying dealers in intangibles and the public utility tax. "Qualifying dealers in intangibles" are dealers in intangibles that are owned by, or that are under common control with, a financial institution, or are a member of a qualifying controlled group of which an insurance company also is a member.²⁷⁰ The entire tax levied under continuing law on qualifying dealers in intangibles is retained by the state whereas the tax levied under continuing law on other types of dealers in intangibles is shared between the state and local taxing jurisdictions.

The act specifies that any credit approved by the Authority is to be claimed by a taxpayer who is a qualifying dealer in intangibles or public utility on a tax return that is due after the Authority issues a tax credit certificate to the taxpayer.

Credit amounts

Under continuing law, a taxpayer who receives approval from the Authority for a tax credit may elect to receive either a refundable or a nonrefundable credit. The act clarifies the amount of credit that may be claimed for any given tax

²⁷⁰ *Common ownership or control means direct or indirect control of more than 50% of a corporation's capital stock with voting rights (R.C. 5733.052(A) (not in the act)).*



reporting period with respect to each of the taxes to which the credit can potentially apply.

(1) Continuing law specifies that taxpayers who elect a refundable credit and whose tax liability for any given reporting period is less than the amount of the credit receive a refund equal to 75% of the amount by which the credit exceeds the tax liability. The act clarifies that this 75% amount is in addition to the amount of tax against which the credit is applied for that reporting period.

(2) The act specifies, further, that to the extent a taxpayer's tax liability for any given reporting period exceeds the amount of refundable credit that the taxpayer is entitled to claim, the amount of credit to which the taxpayer is entitled is the full amount of refundable credit authorized by the authority.

(3) Finally, the act provides that for purposes of determining whether the amount of a refundable venture capital credit exceeds the taxpayer's tax liability with respect to any given reporting period, the amount of the credit is to be compared against the taxpayer's tax liability after deducting all nonrefundable credit that the taxpayer is entitled to claim for that tax reporting period.

Claiming of credit by equity investors

The act specifies the manner in which equity investors in a pass-through entity are to claim their respective shares of a tax credit granted to the pass-through entity by the Authority.²⁷¹ The act provides that each equity investor may claim a credit against any of the taxes against which Venture Capital Authority tax credits may be claimed.²⁷² The credit must be claimed for the equity investor's taxable year in which or with which ends the taxable year of the pass-through entity. The amount of the credit that may be claimed by an equity investor is equal to the investor's distributive or proportionate share of the total credit amount set forth in the tax credit certificate issued by the Authority. The act prohibits the issuing of a tax credit certificate to a pass-through entity until each equity investor in the pass-through entity elects to receive a refundable or nonrefundable tax credit.

²⁷¹ *A pass-through entity is a partnership, limited liability company, S corporation, or other entity that generally is not taxed as an entity; instead, the constituent owners are taxed on their distributive shares of income from the entity.*

²⁷² *If all the equity investors in a pass-through entity are ineligible to claim a credit against the same tax, then each equity investor may elect to claim a credit against the tax to which the equity investor is subject.*



Motor fuel taxes

The motor fuel use tax

(R.C. 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, and 5728.08)

The motor fuel use tax is levied on the amount of motor fuel consumed by commercial cars and commercial trucks in Ohio, when the fuel was purchased outside Ohio. Until July 1, 2005, the tax was equal to the same amount as the motor fuel tax, plus 2¢ per gallon. On July 1, 2005, the 2¢ per gallon surcharge was eliminated, so the fuel use tax now equals the same amount as the motor fuel tax. Payment of the fuel use tax is made by purchasing in Ohio the same amount of motor fuel as is consumed while operating commercial cars or trucks on Ohio's highways, or by direct payment to the Treasurer of State with a fuel use tax return. Every person liable for the tax must apply annually to the Tax Commissioner for a fuel use permit. Alternatively, a person who is liable for the tax must apply to the Tax Commissioner for a single-trip fuel use permit.

Under the act, if payment of the fuel use tax is made by purchasing in Ohio motor fuel for which the motor fuel tax has been paid, no further use tax has to be paid, and a fuel use tax return does not have to be filed. In addition, a person does not have to obtain a fuel use permit, unless the person is operating a commercial car or commercial tractor upon public highways in two or more states (including the District of Columbia and Canada). This eliminates the requirement that persons operating commercial cars or tractors intrastate obtain a fuel use permit. Accordingly, the act specifies that the prohibition against operating a commercial car or commercial tractor without a fuel use permit does not apply if the car or tractor is operated intrastate.

Continuing law imposes the motor fuel use tax on three-axle commercial cars, commercial cars with two axles operated as part of a commercial tandem having a weight exceeding 26,000 pounds, and commercial tractors. The act specifies that the tax is imposed on three-axle commercial cars "regardless of weight," and that the tax is imposed on two-axle commercial cars having a weight exceeding 26,000 pounds operated alone or as part of a commercial tandem.

Under continuing law, the fuel use tax is imposed on commercial cars that carry property. The act imposes the tax also on commercial cars that carry persons.

Under former law, farm trucks with low fuel usage could file a return and pay the tax annually. The act eliminates this requirement. Instead, the fuel use tax on farm trucks must be paid quarterly the same as other commercial cars or commercial tractors.



Motor fuel excise tax: prompt payment discount and shrinkage allowance

(Sections 557.09.06 and 557.09.07)

The act temporarily reduces the motor fuel excise tax prompt payment discount and shrinkage allowance currently allowed for motor fuel dealers. Under the motor fuel excise tax law (R.C. 5735.06), a motor fuel dealer filing a complete and timely monthly report is entitled to deduct a discount equal to 3% of the fuel gallonage the dealer received minus 1% of the fuel gallonage sold to retail dealers (in recognition of the retail shrinkage allowance discussed below). The act reduces the discount to 2.5% (minus 0.83% of gallonage sold to retail dealers) during fiscal year 2006 and to 1.95% (minus 0.65% of gallonage sold to retail dealers) during fiscal year 2007.

The current shrinkage allowance (R.C. 5735.141), which is provided as a refund to retail dealers against fuel taxes paid, equals 1% of the taxes paid on fuel the dealer purchases each semiannual period. Under the act, the shrinkage allowance equals 0.83% for the semiannual periods ending in fiscal year 2006 and equals 0.65% for the semiannual periods ending in fiscal year 2007.

The Tax Commissioner is authorized to adopt rules to administer the temporary reductions.

Motor fuel tax refund application

(Section 553.02.01)

The motor vehicle fuel tax is composed of several components. One component is levied by R.C. 5735.29 (not in the act). Prior to July 1, 2003, this component was 2¢ per gallon; it was increased to 4¢ per gallon on July 1, 2003, and to 6¢ on July 1, 2004. Continuing law permits a city, exempted village, joint vocational, or local school district or an educational service center that purchases any motor fuel for school district or service center operations to file an application with the Tax Commissioner for a refund of those portions of this component of the fuel tax that became effective on or after July 1, 2003. The refund application must be filed with the Tax Commissioner within one year from the date of purchase.

The act provides that notwithstanding this one year application deadline, a school district or educational service center that failed to file or failed to file in a timely manner an application for a refund of the portion of the motor vehicle fuel tax that became effective on July 1, 2003, and that the school district or educational service center paid through the purchase of motor fuel on or after that

date, may file a refund application with the Tax Commissioner during the 60 days following the act's immediate effective date. The Tax Commissioner must process any such refund application as if it had been timely filed under current law.

Pass-through entity tax law: technical and conforming changes

(R.C. 5733.40; Section 557.27)

Under ongoing law, a withholding tax is imposed on distributive shares held by nonresident investors in pass-through entities (e.g., partnerships, limited liability companies, and S corporations) that have a taxable business presence in Ohio. The tax helps ensure satisfaction of the investors' Ohio tax liabilities, especially if they lack any tax-related connection with Ohio other than their ownership of an entity doing business in Ohio. The tax is imposed on the entity on the basis of the nonresident investors' respective tax liabilities to Ohio (whether corporation franchise or personal income, depending on the status of the investor). In computing the amount of tax to be withheld, the entity's expenses and losses paid to a related entity are apportioned to Ohio under the weighted three-factor formula (sales, property, and payroll). In computing a nonresident investor's individual tax and the corresponding nonresident credit, only compensation expenses paid to a related entity are apportioned.

The act ensures that all expenses a pass-through entity pays to a related entity are apportioned for the purposes of both the withholding tax and computing the nonresident investors' individual tax and the corresponding nonresident credit.

The act also expressly provides that, for the purposes of the pass-through entity tax, a nonresident investor's distributive share of a pass-through entity (which is the basis for measuring the withholding tax on account of the investor) includes income amounts from a qualified subchapter S subsidiary ("QSSS"). A QSSS is a wholly-owned subsidiary of an S corporation that is treated for federal tax purposes as not being separate from the parent S corporation. The act's treatment of QSSS distributive shares under the pass-through entity tax is consistent with the current treatment of distributive shares of a "disregarded entity," which is a company owned by a parent company but not treated as separate from the parent for tax purposes (e.g., a limited liability company with but a single member).

Tax Commissioner authorized to require identifying information from persons filing tax documents with the Department of Taxation

(R.C. 5703.057, 5703.26 (not in the act), and 5703.99 (not in the act))

Overview

The act authorizes the Tax Commissioner to require any person filing a tax document with the Department of Taxation to provide identifying information requested by the Commissioner, including the person's social security number, federal employer identification number, or other identification number requested by the Commissioner. A person who is required to provide identifying information is required to notify the Commissioner of any changes with respect to that information prior to, or at the time of, filing the next tax document requiring identifying information. The act states that the Tax Commissioner is being granted authority to request identifying information in order to increase the efficiency with which the Commissioner administers taxes and fees.

Confidentiality of social security numbers

The act requires that the Commissioner maintain the confidentiality of individuals' social security numbers. Specifically, the act provides that when transmitting or otherwise making use of a tax document that contains a person's social security number, the Commissioner is to take all reasonable measures necessary to ensure that the general public is unable to view the number. The act directs the Commissioner to mask social security numbers when necessary so that they are not readily discernible by the general public.

Commissioner may impose penalties for failure to provide or update identifying information

The act permits the Commissioner to impose penalties for failure to provide identifying information. If the Commissioner requests identifying information from a person and the person does not respond by providing valid identifying information within 30 days after the request is made, the Commissioner may impose a penalty upon that person of up to \$100. If, after the expiration of the initial 30 day period, the Commissioner makes one or more subsequent requests for identifying information, and valid identifying information is not provided to the Commissioner within 30 days after the Commissioner makes the subsequent request, the Commissioner may impose an additional penalty of up to \$200 for each subsequent request that a person fails to comply with in a timely fashion. The act provides, further, that if a person required to provide identifying information fails to notify the Commissioner of a change with respect to that information within 30 days after filing the next tax document requiring the

identifying information, the Commissioner may impose a penalty upon that person of up to \$50.

Under the act, penalties imposed by the Commissioner may be billed and assessed by the Commissioner in the same manner as the tax or fee with respect to which the Commissioner seeks the identifying information. The act specifies that the penalties are in addition to any applicable criminal penalties and any other penalties that the Commissioner is authorized by law to impose.

Criminal penalties

Continuing law makes it a criminal offense to file a false or fraudulent document with the Department of Taxation with the intent to defraud the state or any of its political subdivisions. Violation of this criminal prohibition constitutes a felony of the fifth degree, which is punishable by six to 12 months of confinement and a fine of up to \$2,500, to which a court may impose an additional fine of up to \$7,500. The act specifies that the criminal prohibition for filing false or fraudulent tax documents with intent to defraud applies with respect to tax documents containing false or fraudulent identifying information.

School district income tax on earnings

(R.C. 5748.01, 5748.02, 5748.03, 5748.04, and 5748.08)

Background

The board of education of any school district, except a joint vocational school district, may propose an income tax levy to the district's voters. The proposal may be submitted separately or in combination with a property tax levy and bond issue for permanent improvements. Under continuing law, a school district income tax is levied on the "taxable income" of (1) an individual during the portion of the taxable year that the individual is a resident of the district and (2) on the estate of a decedent who was domiciled in the district at the time of death.

Under prior law, an individual's "taxable income" was always the individual's "Ohio adjusted gross income," which consists of *both*:

(A) "Earned income" (wages, salaries, tips, self-employment net earnings, and other employee compensation that is reported as earned income on state and federal income tax returns); and

(B) "Unearned income" (investment income, such as interest, dividends, and capital gains, and retirement benefits).



Alternative school district income tax base

The act permits a school district board to choose to levy a school district income tax on only individual earned income instead of levying the tax on an individual's and a decedent's entire taxable income. School districts are not required to use the alternative tax base and may continue to levy an income tax on Ohio adjusted gross income. If the board opts to use the alternative tax base, however, the board must specify in its resolutions and the ballot language proposed to the voters that the tax, if approved, will be levied on only the "earned income of individuals residing in the school district."

The act also makes modifications to the statutory procedures for levying and repealing school district income taxes to account for the new alternative tax base and the specifications that must be made by the district board in its resolutions and the applicable ballot language.

Reauthorization of municipal income tax sharing with school districts

(R.C. 718.09 and 718.10)

Between 1991 and the end of 2000, municipal corporations were permitted to enter into an agreement with an overlapping school district whereby the municipal corporation levied an income tax and shared at least 25% of the revenue with the school district. The tax had to be approved by the voters of the municipal corporation. The municipal corporation and school district territory had to be at least 95% in common, or 90% in common if the remaining 10% of school district territory lay entirely within another municipal corporation with a population of 400,000 or more. A tax sharing agreement also could be made between a school district and two or more municipal corporations so long as the territory of the school district was at least 95% in common with all of those municipal corporations.

No such tax sharing agreements could be initiated after 2000, but any that existed by the end of 2000 could continue in effect. According to the Department of Taxation, the City of Euclid and the Euclid City School District were the only municipal corporation and school district to have a tax sharing agreement in place when the authority was terminated.

The act permits municipal corporations to again levy income taxes to be shared with an overlapping school district under the same terms provided under the prior authority with one exception: the act authorizes a municipal corporation to levy the income tax only on the incomes of individuals who are residents of the municipal corporation. Nonresidents cannot be required to pay the tax.

Convention facilities authority lodging tax

(R.C. 351.01, 351.021, 351.06, 351.141, 351.16, and 5739.08)

Continuing law authorizes counties to create convention facilities authorities with the authority to administer convention, entertainment, or sports facilities located within their respective territories. Under certain circumstances, a convention facilities authority is authorized to levy a lodging tax of up to 4%. In lieu of, or in addition to, this tax, an authority may levy a lodging tax of up to 0.9% in an overlapping municipal corporation that levies a city lodging tax. Under prior law, an authority could levy one or both of these taxes only if the authority's board of directors adopted the resolution levying the tax on or before December 31, 1988.

The act extends certain convention facilities authorities' taxation authority. Under the act, the board of directors of a convention facilities authority that is not currently levying a lodging tax as described above, that has been authorized by the board of county commissioners to levy a lodging tax, and that is located in an Appalachian county²⁷³ having a population less than 80,000 according to the most recent federal decennial census may levy a lodging tax of up to 3%. The tax must be levied pursuant to a resolution adopted by the board on or before December 31, 2005. The act specifies that the tax is in addition to any other lodging tax authorized to be levied by a political subdivision under continuing law.

The act authorizes a convention facilities authority to issue bonds and notes in anticipation of the proceeds of the tax. A convention facilities authority may secure any such bonds and notes through a trust agreement between the authority and a corporate trustee.

²⁷³ *To be eligible for the new taxation authority created in the act, the convention facilities authority must be located in a county designated as being in the "Appalachian region" under the federal Appalachian Regional Development Act of 1965 (ARDA). The following Ohio counties are designated as being in the "Appalachian region" under ARDA: Adams, Athens, Belmont, Brown, Carroll, Clermont, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Tuscarawas, Vinton, and Washington (40 U.S.C. § 14102).*

Convention center tax authorizations

The act authorizes counties meeting a minimum population threshold of 1.2 million to levy a food and beverage tax and a hotel lodging (or bed) tax to pay costs relative to a convention center.²⁷⁴

Food and beverage tax for convention centers

(R.C. 307.677)

Existing law (R.C. 307.676) authorized the board of county commissioners of a county having a population of one million or more according to the most recent federal decennial census to propose to the electors of the county the levy of a tax of not more than 2% on every retail sale in the county of food and beverages that are to be consumed on the premises where sold. Proceeds of the tax are used to pay the real and actual costs of administering the tax and the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center. Authorization to propose this food and beverage tax expired on September 1, 2004.

The act similarly authorizes the board of county commissioners of a county having a population of 1.2 million or more to propose to the electors of the county, by resolution adopted by a majority of its members on or before July 1, 2008, the levy of a tax of not more than 2% on every retail sale in the county of food and beverages that are to be consumed on the premises where sold. Proceeds of the food and beverage tax are to be used to pay the expenses of administering the tax and the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center. The proceeds may be contributed to a convention facilities authority that was created before July 1, 2005.²⁷⁵ The proceeds may not be contributed to a convention facilities authority, corporation, or other entity that was created after July 1, 2005, unless the mayor of the municipal corporation in which the convention center is to be operated by the authority, corporation, or entity has consented to creation of the authority, corporation, or entity.

²⁷⁴ A "convention center" is any structure that has been expressly designed and constructed for the purposes of presenting conventions, public meetings, and exhibitions. A "convention center" includes parking facilities that serve the center and any personal property used in connection with the center's structure or facilities.

²⁷⁵ Continuing law authorizes a county to create a convention facilities authority to administer convention, entertainment, or sports facilities located within its territory (R.C. Chapter 351.).

The 1.2 million population threshold is determined by referring to the most recent federal decennial census or the most recent annual population estimate published or released by the Census Bureau at the time the resolution proposing the food and beverage tax is adopted. The food and beverages upon which the tax may be levied are any raw, cooked, or processed edible substance used or intended for use in whole or in part for human consumption, including ice, water, spirituous liquors, wine, mixed beverages, beer, soft drinks, soda, and other beverages.

The board certifies the resolution proposing the food and beverage tax to the board of elections. The resolution is to direct the board of elections to submit the proposal to the electors of the county at the next primary or general election occurring not less than 75 days after the resolution is certified. The food and beverage tax takes effect if it is approved by a majority of the electors voting on the proposal. The tax remains in effect for the period of time specified in the resolution, but for not longer than 40 years.

The board of county commissioners is required to establish all rules necessary for administration and allocation of the food and beverage tax. The rules may prescribe the time for payment of the tax, and may provide for the imposition of penalties or interest, or both, for late payments. A penalty may not exceed 10% of the tax due and the rate of interest may not exceed the federal short-term rate plus 3%.

The food and beverage tax is in addition to any other tax levied under continuing law. The price upon which state sales and use taxes are calculated does not include the food and beverage tax. Conversely, the price upon which the food and beverage tax is calculated does not include state sales and use taxes. Levy of the state sales tax on a transaction does not preclude levying the food and beverage tax on the same transaction.

Lodging taxes for convention centers

(R.C. 5739.09(I))

The act authorizes the following hotel lodging (or bed) taxes to complement three existing hotel lodging tax authorizations, the proceeds of which also pay costs relative to convention centers:

(1) The board of county commissioners of a county having a population of 1.2 million or more that, within 90 days after December 22, 1992, levied a lodging tax to enable the acquisition, construction, and equipping of a port authority educational and cultural facility in the county (R.C. 5739.09(D)) is authorized, by resolution adopted by a majority of its members, to provide for extending the lodging tax and for proceeds of the lodging tax to be used to pay the direct and



indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center--but only to the extent the proceeds are no longer needed for purposes of the port authority educational and cultural facility and only after deducting the real and actual costs of administering the tax.²⁷⁶ The tax is to be extended at a rate that does not exceed 1.5% for a period of time determined by the board, but that does not exceed an additional 40 years. The 1.2 million population threshold is determined by referring to the most recent federal decennial census or the most recent annual population estimate published or released by the Census Bureau at the time the resolution proposing the tax extension is adopted. (This authorization complements a similar authorization in R.C. 5739.09(H)(2) that applies to counties having a population of one million or more according to the most recent federal decennial census.)

(2) The board of county commissioners of a county having a population of 1.2 million or more that has levied a general lodging tax (R.C. 5739.09(A)(1)) is authorized, by resolution adopted by a majority of its members, to increase the rate of the general lodging tax to a rate that does not exceed 5%, and to provide that all proceeds from the rate in excess of 3%, after deducting the real and actual costs of administering the tax, are to be used to pay the direct and indirect costs of constructing, improving, expanding, equipping, financing, or operating a convention center. (This authorization complements a similar authorization in R.C. 5739.09(H)(3) that applies to counties having a population of one million or more.)

(3) The board of county commissioners of a county having a population of 1.2 million or more that has levied a general lodging tax (R.C. 5739.09(A)(1)) is authorized, by resolution adopted by a majority of its members on or before July 1, 2008, to provide that all or a portion of the proceeds of the general lodging tax, after deducting the real and actual costs of administering the tax and the amount of the first 3% of the proceeds that is required to be returned to townships and municipal corporations, are to be used (a) to satisfy any pledges made in connection with an agreement between the board and a convention and visitors' bureau whereby the bureau constructs and equips a convention center and the board levies a tax for that purpose (R.C. 307.695 and 5739.09(C)) or (b) otherwise to pay the direct and indirect costs of constructing, improving, expanding,

²⁷⁶ A "port authority educational and cultural facility" is a facility located within an urban renewal area that may consist of a museum, archives, library, hall of fame, center for contemporary music, or other facilities necessary to provide programs of an educational and cultural nature, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements, and interests that may be appropriate for, or used in connection with, the operation of the facility (R.C. 307.671 (not in the act)).

equipping, financing, or operating a convention center. (This authorization complements a similar authorization in R.C. 5739.09(H)(4) that was available until September 1, 2004, to counties having a population of one million or more.)

The proceeds of a tax levied or extended as described in paragraphs (1), (2), and (3) above may be contributed to a convention facilities authority that was created before July 1, 2005. The proceeds of such a tax cannot be contributed to a convention facilities authority, corporation, or other entity that was created after July 1, 2005, unless the mayor of the municipal corporation in which the authority, corporation, or entity is to operate the convention center has consented to creation of the authority, corporation, or entity.

Temporary tax amnesty program

(Section 553.01)

Program description

The act requires that the Tax Commissioner administer a temporary tax amnesty program from January 1, 2006, to February 15, 2006, with respect to delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes. The program applies only to taxes that were due and payable as of May 1, 2005, which were unreported or underreported, and which remain unpaid on the date on which the program commences. The program does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is pending. Nor does the program apply to any unpaid tax that pertains to a tax period that ends after the act's immediate effective date.

If, during the program, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive or abate all applicable penalties and the other one-half of any interest that accrued on the taxes. The act authorizes the Commissioner to require a person participating in the program to file applicable returns or reports, including amended returns or reports. Persons owing tangible personal property taxes are required to file a return with the Commissioner listing all taxable personal property not previously listed by the person on a tangible personal property tax return.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the program is immune from criminal prosecution or any civil action with respect to the taxes paid through the program.



The act specifies, further, that no assessment may be issued against any person with respect to a tax paid through the program.

The act requires that the Commissioner issue forms and instructions for the program, and take any other actions necessary to implement the program. The act directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it.

Distribution of taxes collected under the program

Generally, taxes and interest collected under the program will be credited to the General Revenue Fund. However, any tax collected under the program that a taxing district would have received had the tax been timely paid is distributed to that taxing district.

State reimbursement for \$10,000 business property exemption

Continuing law exempts the first \$10,000 of a business' tangible personal property from property taxation (R.C. 5709.01(C)(3)). Currently, the state reimburses local taxing districts for the resulting revenue reduction.²⁷⁷ The act specifies that taxing districts will not be reimbursed for the amounts by which the exemption reduces tangible personal property taxes collected under the program.

Dealers in intangibles tax: penalty review procedures established

(R.C. 5711.28)

Continuing law imposes a tax on shares of, and capital employed by, dealers in intangibles at the rate of eight mills on the dollar. Dealers in intangibles are required to file annual reports describing their resources and tax liabilities. Continuing law imposes penalties upon dealers in intangibles who fail to file full and complete reports and pay tax.

The act establishes procedures by which a dealer in intangibles may petition for, and receive, a review of penalties imposed upon the dealer in connection with the dealer's reporting and payment of the dealers in intangibles tax. The procedures are the same as those that are currently available to taxpayers who have been penalized for failing to make a tangible personal property tax return or to report all taxable personal property.

²⁷⁷ *The reimbursement for the \$10,000 exemption is being phased out over the next several years. Under the act, the reimbursement is scheduled to be completely phased-out by 2009 (see "**Accelerate phase-out of state reimbursement for \$10,000 business property exemption**" above).*

Under the act, whenever the Tax Commissioner imposes a penalty upon a dealer in intangibles, the Commissioner must provide notice to the dealer by mail. If the notice reflects corrections in the form of an assessment of property not listed in, or omitted from, a report, or the assessment of any item or class of taxable property listed in a report by the dealer in excess of the value or amount listed on the report, the dealer is to file a petition for reassessment with the Tax Commissioner in accordance with procedures established in continuing law (R.C. 5711.31). However, if no such correction is reflected in the notice, the dealer is to file a petition for abatement of the penalty assessment as described below.

A dealer must file a petition for abatement of penalty within 60 days after receiving notice of the penalty assessment. The petition must be filed in person or by certified mail. The petition must have attached to it a copy of, and must incorporate by reference, the notice of penalty assessment, but failure to attach a copy of the notice and to incorporate it by reference does not invalidate the petition. The petition must indicate that the dealer's only objection is to the assessed penalty and must state the reason for the objection.

Upon the filing of the petition for abatement of penalty, the Commissioner must notify the Treasurer of State, who, under continuing law, maintains an intangible property tax list. The Tax Commissioner is not to hold a hearing in connection with the Commissioner's review of a petition for abatement of penalty. If, after reviewing a petition, the Commissioner determines that the failure to file a complying report or pay tax was due to reasonable cause and not willful neglect, the Commissioner may abate the penalty in whole or in part. The Commissioner is required to transmit a certificate of the Commissioner's determination to the taxpayer. The Commissioner must notify the Treasurer of the final determination if the taxpayer does not appeal the determination or upon the final determination of any appeal, whichever the case may be. Upon receipt of the notification, the Treasurer must make any corrections to the Treasurer's records and tax lists as required by the notice.

The act provides that the Commissioner's decision is final with respect to the percentage of penalty, if any, the Commissioner determines is appropriate. However, neither the Commissioner's decision nor a final judgment on appeal finalizes the assessment of the property.

Definition of "dealer in intangibles"

(R.C. 5725.01; Section 557.13.06)

Under continuing law, dealers in intangibles are subject to a tax of eight mills on each dollar of value of their shares and capital. A "dealer in intangibles" includes every person who keeps an office or other place of business in Ohio at



which the person engages in the business of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness, or of buying or selling bonds, stocks, or other investment securities. Neither casual nor isolated transactions of any of these kinds made a person a "dealer in intangibles." The act specifies, instead, that a "dealer in intangibles" is a person who engages in a business "that consists primarily" of transactions of any of these kinds.

Moreover, a person who, having engaged in a business "that consists primarily" of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness on the person's own account, remains in business "primarily" for the purpose of realizing upon the assets of that business, is considered to be a "dealer in intangibles" even though the person is not presently engaged in "a business that consists primarily of" transactions of those kinds. But under continuing law, a person's investment of funds as personal accumulations or as business reserves or working capital does not make the person a "dealer in intangibles."

The act requires the Tax Commissioner to adopt a rule defining what it means to be "primarily" engaged in the activities described above. The Commissioner is required to seek input from current dealers in intangibles before adopting the rule.

Tax Commissioner reports on tourism-related tax revenue

(R.C. 5739.36)

The act requires the Tax Commissioner to prepare a report summarizing the total combined state, county, and transit authority sales and use tax collections for each semiannual period ending on the last day of June and December by vendors in the travel and tourism industry. The purpose of the report is to track the growth and overall impact of the travel and tourism industry in Ohio. The first report required to be completed by the Commissioner is for the semiannual period ending December 31, 2005.

The act requires that the Commissioner prepare the report by industry classification using business activity codes. The report must reflect all industries included in the industrial classification system used by the Commissioner the activities of which relate in any way to travel and tourism. The report is to include information pertaining to industries such as lodging establishments, bars, and restaurants.

The Commissioner must file a copy of the report with the Governor, the President of the Senate, the Speaker of the House of Representatives, and the

Legislative Service Commission. The reports must be filed on or before the first day of May or November that immediately follows the semiannual period to which the report relates. A copy of the Commissioner's most recent quarterly report also must be made available to the public through the Department of Taxation's official internet web site.

The act requires the Commissioner to adopt rules that are necessary to administer the reporting provision.

DEPARTMENT OF TRANSPORTATION

- Authorizes projects between transportation improvement districts (TIDs) and governmental agencies (including local governments) for the financing of a street, highway, interchange, or other transportation project pursuant to an agreement entered into on or before December 31, 2005, and, in connection with those joint projects, authorizes a TID to purchase securities issued by the governmental agency under certain conditions.
- Specifically includes special assessments levied by a TID in the definition of its revenues.
- Allows the State Infrastructure Bank to refund bonds issued by a transportation improvement district if the bonds were issued to finance a qualified project by a TID and the principal, interest, and any redemption premium are payable by the Department of Transportation.
- Modifies the annual license and registration taxes for general aviation aircraft, and allows the tax revenue to be used for capital improvements as well as maintenance.
- Requires the Director of Transportation, after conferring with the Director of Natural Resources, to construct, repair, and maintain all roads and bridges within the state parks during fiscal years 2006 and 2007, and requires \$5 million to be expended for the purpose in each fiscal year.



Transportation improvement district projects

(R.C. 133.09(C), 5540.01(F), and 5540.09(B); Section 515.03)

The act authorizes transportation improvement districts (TIDs) and at least two other governmental agencies (including local governments) to enter into an agreement on or before December 31, 2005, providing for the joint financing of any street, highway, interchange, or other transportation project. The agreement must be approved by resolution or ordinance passed by the legislative authority of each of the parties to the agreement, and the resolution or ordinance must authorize the execution of the agreement by a designated official or officials of each of the parties to the agreement. The agreement, when so approved and executed, is in full force and effect.

Any party to the agreement may issue securities to finance the project, and the TID is authorized to purchase those securities as an investment. When a TID purchases securities under this authority, at least half of the property necessary for the joint project must be located within the territory of the TID. The securities represent the governmental agency's obligation to the TID to pay the agency's portion of the joint project's cost. This securities purchase arrangement is excepted from a provision of continuing law stating that a TID is not authorized to incur debt or liability on behalf of, or payable by, the state or its political subdivisions.

If a township issues securities under the act's authority, the securities are exempted from the statutory voted and unvoted limitations on township debt.

The act also adds special assessments levied by a TID to the statutory definition of its "revenues." A TID may pledge all or part of its revenues for the payment of bond service charges.

Transportation improvement district bond refunding through the State Infrastructure Bank

(R.C. 5531.10)

Continuing law creates the State Infrastructure Bank (SIB) and authorizes the Director of Transportation to use the resources of the SIB for both financing state projects and providing financial assistance to local and private projects. The SIB consists of federal grants and awards or other federal assistance received by the state, payments received by the Department of Transportation in connection with providing financial assistance for qualifying projects, and the proceeds of obligations issued by the Treasurer of State. Financial assistance provided by the Director for qualified projects may be in the form of loans, loan guarantees, letters

of credit, leases, lease-purchase agreements, interest rate subsidies, debt service reserves, and such other forms as the Director determines to be appropriate.

In authorizing the issuance of bonds and the deposit of the proceeds into the SIB, continuing law also authorizes the Treasurer to refund any obligations previously issued. The act allows the SIB bond program to refund certain bonds ("district obligations") issued by a transportation improvement district (TID). The act defines "district obligations" as bonds, notes, or other evidence of obligation issued to finance a qualified project by a TID, of which the principal, interest, and any redemption premium are payable by the Department of Transportation.

General aviation license tax

(R.C. 4561.17, 4561.18, and 4561.21)

Under prior law, the owner of a glider was required to pay an annual license and registration tax of \$3. The owner of any other general aviation aircraft, including a balloon, was required to pay an annual license and registration tax of \$100. The act increases the annual tax for a glider to \$15, decreases the annual tax for a balloon to the same amount (\$15), and changes the annual tax for all other general aviation aircraft to \$15 per seat.

All such tax revenue is deposited into the County Airport Maintenance Assistance Fund, which the act renames as the Airport Assistance Fund. Prior law required the Director of Transportation to distribute money in the fund to counties to assist them in maintaining airports they own. The act requires the Director to distribute the money to "eligible recipients" for maintenance, and also for capital improvements, to any publicly owned airports.

Maintenance of state park roads

(Sections 401.11, 401.12, and 401.13)

Am. Sub. H.B. 68 of the 126th General Assembly earmarked \$4,517,500 of highway construction appropriations to be used each fiscal year during the FY 2006-2007 biennium by the Department of Transportation for the construction, reconstruction, or maintenance of public access roads, including support features, to and within state facilities owned or operated by the Department of Natural Resources, "as requested by the Director of Natural Resources." The act increases the earmark to \$5 million. In addition, the act removes the language directing the Department of Transportation to make such improvements "as requested by the Director of Natural Resources" and instead requires the Director of Transportation to confer with the Director of Natural Resources in fiscal years 2006 and 2007 concerning the establishment, construction, reconstruction, improvement, repair,



and maintenance of all roads and bridges within the boundaries of all state parks, including all such parks and properties under the control and custody of the Department of Natural Resources. After conferring with the Director of Natural Resources, the Director of Transportation must expend \$5 million in each fiscal year to establish, construct, reconstruct, improve, repair, and maintain all such roads and bridges.

OHIO TUITION TRUST AUTHORITY

- Permits the rollover or termination of an account under either the Guaranteed College Savings Program or the Variable College Savings Program for any reason by filing written notice with the Tuition Trust Authority.
- Changes the method of calculating refunds under the Guaranteed Program and the Variable Program when an account is terminated.
- Creates the Index Operating Fund and specifies that the Ohio Tuition Trust Authority may deposit into and make payments from either the Index Operating Fund or the Variable Operating Fund in connection with the college savings programs.
- Permits scholarship programs to receive refunds upon filing a written request with the Authority.
- Eliminates the requirement that the Authority refund amounts when a beneficiary is awarded a scholarship, a waiver of tuition, or similar financial aid.
- Eliminates the requirement that an institution of higher education return to the Authority a share of any refund it makes when a beneficiary withdraws from school.

Background

Under section 529 of the Internal Revenue Code, states may establish and maintain a state tuition program under which a person (1) may purchase credit toward tuition on behalf of a designated beneficiary that entitles the beneficiary to the waiver or payment of qualified higher education expenses or (2) may make

contributions to an account set up for the purpose of meeting the qualified higher education expenses of a designated beneficiary. These programs receive favorable federal and state tax treatment for their assets and distributions to beneficiaries.

In Ohio, under continuing law, the Ohio Tuition Trust Authority operates two college savings programs that correspond to the types permitted by federal law: (1) a guaranteed savings program and (2) a variable savings program. Each program allows beneficiaries to acquire savings toward the future payment of college tuition. A person may participate in one or both of the savings programs.

Guaranteed College Savings Program

Contributors to the Guaranteed College Savings Program purchase tuition credits on behalf of a designated beneficiary at approximately 1% of the weighted average tuition charged at public four-year universities in Ohio for the year the credits are purchased, although the actual cost may be higher if the Authority determines that a price adjustment is necessary to maintain the actuarial soundness of the program. Each credit may be redeemed upon the beneficiary's enrollment at a college, university, or other institution of higher education anywhere in the United States for 1% of the weighted average tuition charged at public four-year universities in Ohio for the year in which the credits are spent for college expenses. Tuition credits under the Guaranteed Program are backed by the full faith and credit of the State of Ohio. The program is based upon the assumption that 100 tuition credits equal one year of college tuition so that purchasers may be reasonably certain of the percentage of future college tuition costs that will be covered by the credits they acquire.

Variable College Savings Program

Under the Variable College Savings Program, rather than purchasing tuition credits, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products in accordance with a plan adopted by the Authority. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

Index Operating Fund

(R.C. 3334.19)

The act creates the Index Operating Fund. Fees, charges, and other costs imposed or collected by the Tuition Trust Authority in connection with the Variable College Savings Program must be credited to either the Index Operating



Fund or the Variable Operating Fund (already established). The Authority may, at its discretion, make any payments from the Index Operating Fund considered appropriate for the benefit of any college savings programs administered by the Authority.

The act further clarifies that both the Index Operating Fund and the Variable Operating Fund are established in the state treasury, rather than as custodial funds.

Change in terminology

(R.C. 2329.66, 3334.01, 3334.02, 3334.03, 3334.07, 3334.08, 3334.09, 3334.10, 3334.11, 3334.12, 3334.15, 3334.16, 3334.17, 3334.18, 5747.01(A)(10), and 5747.70)

Under prior law, a credit purchased under the Guaranteed Program was referred to as a "tuition credit." The act revises the law to instead refer to "tuition units" and specifies that "tuition units" include tuition credits purchased prior to July 1, 1994.

Account termination and refunds under the Guaranteed Program

(R.C. 3334.10(A))

Prior law

Prior law specified how to calculate refunds upon termination of an account under the Guaranteed College Savings Program. The amount of the refund was calculated differently depending on the reason for the termination. Reasons for which an account could be terminated were: (1) death or permanent disability of the beneficiary, (2) the decision of the beneficiary not to attend college and to request termination of the account, (3) completion of a degree by the beneficiary, (4) rollover of the account into an equivalent tuition program in another state, and (5) any other reason allowed by the Authority.

If a Guaranteed Program account was terminated because of the reason described in (1), above, the refund equaled the total purchase price of tuition credits on account or, if greater, 1% of the weighted average tuition (WAT) times the number of unused tuition units on account, with no administrative fee or penalty assessed. If an account was terminated for the reasons described in (2) or (3), above, the refund equaled at least 1% of current WAT times the number of unused units on account, minus "reasonable" administrative fees and minus any penalty required for the program to comply with section 529. If an account was terminated for any other allowable reason, the Authority could refund either the amount refundable for reason (1) or the amount refundable for reason (2) or (3).

However, the Authority could choose to refund a lesser amount than refundable for reason (2) or (3) to the extent necessary to meet the refund penalty requirements for qualified state tuition programs under section 529 of the Internal Revenue Code.

The act

The act removes language specifying the allowable reasons for terminating a Guaranteed Program account and allowing the Authority to determine other allowable reasons for account termination. Instead, unless otherwise provided for in the tuition payment contract, a tuition unit purchaser may rollover amounts to another qualified tuition program under section 529 or may terminate the account for any reason by filing written notice with the Authority.

If the account is terminated and the beneficiary is under 18 years old, the act specifies that the Authority must use actuarially sound principles to determine the amount of the refund. The act does not address termination of an account if the beneficiary is age 18 or older. The legal meaning of this silence is unclear.

Refund calculations when a Guaranteed Program account is terminated because of the beneficiary's death or permanent disability will continue to equal the purchase price of all unused tuition units on account, or 1% of WAT times the number of unused units on account, whichever is greater, with no administrative fee or penalty assessed (as under prior law).

If all or part of the amount in a Guaranteed Program account is liquidated for a rollover to another qualified tuition program under section 529, the act specifies that the rollover amount must be determined in an actuarially sound manner.

Account termination and refunds under the Variable Program

(R.C. 3334.10(B))

Previously, Variable Program accounts could be terminated for any reason upon filing a written "request" with the Authority, but only after a minimum period of time specified by the Authority. The amount of the refund depended on the reason for termination. If the account was terminated because of the death or permanent disability of the beneficiary or because funds in the account were rolled over into another state's section 529 plan, the refund equaled the account balance minus any administrative fees. (The Authority was permitted to limit the extent to which an account could be rolled over.) If the account was terminated for any other reason, the refund equaled the account balance, minus any administrative

fees, and minus any penalty required for the Variable Program to qualify as a section 529 plan.

The act provides that the contributor to a Variable Program account may rollover amounts to another qualified tuition program under section 529 as well as terminate the account for any reason. The act also requires only that the contributor file a written notice of termination with the Authority, rather than a "request" for termination, and allows the contributor to receive an amount equal to the account balance, less any applicable administrative fees, regardless of the reason for termination or rollover.

Refunds to scholarship programs

(R.C. 3334.10(C))

Under continuing law, entities that establish programs to award scholarships of tuition units may receive refunds only for just cause with the approval of the Authority. The act removes the "just cause" condition and the requirement for Authority approval and allows refunds to scholarship programs upon the filing of a written request with the Authority.

Elimination of refunds for beneficiaries receiving scholarships

(R.C. 3334.10(F))

The act repeals a provision in prior law that required the Authority to refund an amount if a beneficiary is awarded a scholarship (other than from a scholarship program operated through the Authority), a waiver of tuition, or similar subvention. Under that provision, each academic term, the Authority had to refund to the person designated in the payment contract, or to the beneficiary under a scholarship program, the value of the tuition credits or the amounts in the Variable Program account that are not needed on account of the scholarship, waiver, or similar subvention.

Refund of tuition in case of withdrawal from school

(R.C. 3334.10(G))

Previously, if a beneficiary withdrew from an institution of higher education before the end of an academic term, the institution had to return to the Authority a prorated share of any tuition refund it made. The share returned had to equal the portion of tuition paid from the beneficiary's account under the Guaranteed Program or the Variable Program. The Authority, in turn, had to credit this share (less any reasonable charges imposed by the Authority) to the beneficiary's account.



The act eliminates this procedure for dealing with the early withdrawal of a beneficiary. Presumably, the beneficiary or the contributor would keep the tuition refund from the institution, and the amount paid from a college savings program for that academic term would remain deducted from the beneficiary's account.

OHIO VETERANS' HOME AGENCY

- Expands the permissible uses of the moneys in the Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund to include the purchase of medication services.

Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund

(R.C. 5907.15)

Continuing law specifies that the Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund must be used for maintenance costs of the homes and for the purchase of medications, medical supplies, and medical equipment by the homes. The act expands the Fund's permissible uses to include the purchase of medication services.

OHIO WATER DEVELOPMENT AUTHORITY

- Concerning Ohio Water Development Authority competitive bidding thresholds, requires the Authority to use a competitive bidding process for contracts of more than \$25,000.

Competitive bidding requirements

(R.C. 6121.04 and 6123.04)

The Ohio Water Development Authority ("OWDA") provides financing for water supply, waste water, and water pollution control facilities, and also for solid waste and energy resource development facilities. Continuing law allows the OWDA to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers.



Formerly under its water-related statutes, when the OWDA entered into a contract or agreement, other than compensation for personal services, that cost more than \$10,000, it had to contract with the lowest responsive and responsible bidder. Under its solid waste and energy resource development law, the OWDA's competitive bidding threshold was \$2,000. The act changes both these amounts, and instead requires the OWDA to use the competitive bidding process for any contracts of more than \$25,000.

BUREAU OF WORKERS' COMPENSATION

- Requires the Inspector General to have conducted by an independent firm, a fiduciary review of the investments of the assets of the funds specified in the Workers' Compensation Law.
- Requires the Workers' Compensation Oversight Commission ("Oversight Commission") to prohibit, in the objectives, policies, and criteria it adopts for the investment program of the Bureau of Workers' Compensation ("BWC"), investing assets of funds, directly or indirectly, in vehicles that target specified assets, and prohibits the Administrator of Workers' Compensation ("Administrator") from investing in specified investment classes.
- Requires the Oversight Commission to specify in the investment objectives, policies, and criteria it adopts that the Administrator is permitted to invest in an investment class only if the Oversight Commission, by a majority vote, opens that class and specifies requirements for investing in that class.
- Requires the Oversight Commission to adopt new objectives, policies, and criteria for the investment program that comply with the requirements specified above within 30 days after those provisions take effect.
- Requires the Administrator to make investments in consultation with the Chief Investment Officer of the BWC.
- Specifies that the voting members of the Oversight Commission, the Administrator, and the BWC Chief Investment Officer are the trustees of the state insurance fund.

- Requires the Oversight Commission to submit a list of all classes of investments and of all investments prohibited by the act in which the Administrator has invested and the value thereof, and a plan to divest itself, within six months after this provision's effective date, of the prohibited investments.
- Shortens terms of office for members of the Oversight Commission from five to three years.
- Increases the membership of the Oversight Commission from 9 to 11 by adding two investment expert members and specifies qualifications and appointment of, and terms of office for those members.
- Removes requirement that legislative members of the Oversight Commission receive \$50 per meeting.
- Designates the Attorney General as the legal advisor of the Oversight Commission.
- Authorizes the Attorney General to maintain a civil action against a voting member of the Oversight Commission who breaches the member's fiduciary duty to the BWC for harm resulting from that breach.
- Allows the Oversight Commission to retain independent legal counsel if informed of an allegation that the entire Oversight Commission has breached its fiduciary duty to the BWC.
- Provides that the office of a member of the Oversight Commission who is convicted of or pleads guilty to a felony or other specified offense is deemed to be vacant, and that a member who receives a bill of indictment for any of the specified offenses is automatically suspended from the Oversight Commission pending resolution of the criminal matter.
- Specifies that a person who has pleaded guilty or been convicted of specified offenses is ineligible to be a member of the Oversight Commission.
- Requires the BWC, with the advice and consent of the Oversight Commission, to employ a person or designate an employee who is licensed as a Bureau of Workers' Compensation chief investment officer

and who is a chartered financial analyst to be the BWC Chief Investment Officer.

- Specifies the BWC Chief Investment Officer's duties and establishes criteria to evaluate whether a chief investment officer has satisfied the officer's duty of reasonable supervision.
- Prohibits, effective 90 days after this provision's effective date, any person from acting as, and prohibits the BWC from employing a person as the BWC Chief Investment Officer unless the person is so licensed by the Division of Securities in the Department of Commerce in accordance with the act.
- Prohibits the BWC Chief Investment Officer from acting as a dealer, salesperson, investment advisor, or investment advisor representative, and specifies additional prohibitions for the BWC Chief Investment Officer.
- Requires the Division of Securities and the Commissioner of Securities to administer and enforce laws regulating the BWC Chief Investment Officer, including the authority to issue and revoke a BWC chief investment officer license.
- Permits the Director of Commerce, after consultation with the Attorney General, to ask a court of common pleas to order the BWC Chief Investment Officer that is subject to an injunction to make restitution to the BWC for damages caused by the officer's securities law violation.
- Increases from biennially to annually the frequency of the required audits of the workers' compensation state insurance fund.
- Requires the Oversight Commission to have an independent auditor, at least once every ten years, conduct a fiduciary performance audit of the investment program of the BWC.
- Requires the BWC, with the advice and consent of the Oversight Commission, to employ an internal auditor who reports directly to the Oversight Commission on investment matters.
- Establishes fiduciary requirements and conflict of interest prohibitions for members of the Oversight Commission and BWC employees.



- Requires the Administrator, prior to awarding a contract to an investment manager, to have a criminal records check conducted on the investment manager's employees who will be investing BWC funds.
- Requires an investment manager, prior to awarding an investment contract to a business entity, to obtain a list of the business entity's employees who will be investing BWC funds and requires the Administrator to have a criminal records check conducted on those employees.
- Requires the Superintendent of the Bureau of Criminal Identification and Investigation to conduct criminal records checks on these employees upon receiving a request from the Administrator.
- Prohibits the Administrator from entering into a contract with an investment manager if any employee of that manager who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime.
- Prohibits an investment manager from entering into a contract with a business entity if any employee of that entity who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime.
- Prohibits the Administrator and employees of the BWC from conducting any business with or awarding any contract, other than one awarded by competitive bidding, for goods or services costing more than \$500 to individuals and specified types of entities who, within the two previous calendar years, have made one or more contributions totaling in excess of \$1,000 to the campaign committees of the Governor or Lieutenant Governor or candidates for those offices.
- Requires the Administrator, the voting members of the Oversight Commission, and the Chief Investment Officer of BWC to file an annual financial disclosure statement with the Ohio Ethics Commission.
- Allows the appropriate ethics commission to share information concerning an investigation of a voting member of the Oversight Commission with the Attorney General and the Auditor of State.



Bureau of Workers' Compensation investments

Fiduciary review conducted by the Inspector General

(Section 502.03.01)

Under the act, in addition to the Inspector General's powers and duties specified under continuing law and notwithstanding the continuing law requirement that the Inspector General identify other state agencies that also are responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies, and negotiate and enter into agreements with these agencies to share information and avoid duplication of effort (R.C. 121.42(F)), as part of the Inspector General's investigation of the investments of the assets of funds specified in the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131., hereafter "BWC funds"), the Inspector General must have a fiduciary review of those investments conducted by an independent firm. The Inspector General must award a contract to an independent firm in the same manner as the Inspector General awards contracts to special investigators. The act requires the Inspector General to submit a copy of the fiduciary review to the Governor, Attorney General, Auditor of State, and the General Assembly.

Requirements and restrictions for investing

(R.C. 4121.12, 4121.121, and 4123.44; Sections 502.02 and 502.03)

Under law largely retained by the act, the Workers' Compensation Oversight Commission ("Oversight Commission") establishes objectives, policies, and criteria for the administration of the investment program for the investment of assets of BWC funds. The Administrator of Workers' Compensation ("Administrator") invests the surplus and reserve of the state insurance fund in accordance with those objectives, policies, and criteria.

The act requires that the objectives, policies, and criteria adopted by the Oversight Commission prohibit investing assets of funds, directly or indirectly, in vehicles that target any of the following: (1) coins, (2) artwork, (3) horses, (4) jewelry or gems, (5) stamps, (6) antiques, (7) artifacts, (8) collectibles, (9) memorabilia, or (10) similar unregulated investments that are not commonly part of an institutional portfolio, that lack liquidity, and that lack readily determinable valuation. Under the act the Administrator is specifically prohibited from investing in these classes of investments. The act also allows the Oversight Commission to prohibit, on a prospective basis, any specific investment, as opposed to specific investment activity as permitted under former law, that the Oversight Commission finds contrary to its objectives, policies, and criteria.

Under the act, the Oversight Commission must submit both of the following lists to the Governor, the President of the Senate, and the Speaker of the House of Representatives: (1) a list of all of the classes of investments in which assets of funds are invested at the time the act takes effect and in which assets of funds have been invested in the 12 months immediately preceding the effective date of this provision, and (2) a list of all investments that are prohibited by this act in which the Administrator has invested, and the value of each investment. The Oversight Commission must submit these lists within 30 days after the effective date of this provision. Also within that time frame, the Oversight Commission must submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a plan to divest itself, within six months after the effective date of this provision, of any investments that are prohibited by the act.

Additionally, under the act, the Oversight Commission must specify in the objectives, policies, and criteria for the investment program that the Administrator is permitted to invest in an investment class only if the Oversight Commission, by a majority vote, opens that class. After the Oversight Commission opens a class but prior to the Administrator investing in that class, the Commission must adopt rules establishing due diligence standards for employees of the Bureau of Workers' Compensation ("BWC") to follow when investing in that class and must establish policies and procedures to review and monitor the performance and value of each investment class. The act requires the Oversight Commission to submit a report annually on the performance and value of each investment class to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. The act allows the Oversight Commission to vote to close any investment class. Under the act, the Oversight Commission must, within 30 days after these provisions take effect, adopt new objectives, criteria, and policies for the investment program of the BWC that complies with the requirements specified above. The Oversight Commission, under the act, must at least annually *review* and publish, as opposed to only *publish* under former law, the investment objectives, policies, and criteria it adopts.

The act names the voting members of the Oversight Commission, the Administrator, and the Chief Investment Officer of the BWC as the trustees of the State Insurance Fund. In addition to investing any of the surplus or reserve belonging to the state insurance fund in accordance with the investment objectives, policies, and criteria established by the Oversight Commission as required under continuing law, the act requires the Administrator to make those investments in accordance with fiduciary and conflict of interest requirements specified in the act (see "*Fiduciary requirements and conflict of interest*," below). The

Administrator also must make those investments in consultation with the BWC Chief Investment Officer (see "*Chief Investment Officer*," below).

Changes to the Oversight Commission

(R.C. 109.981, 4121.12, and 4121.125; Section 502.01)

Under law retained in part by the act, the Oversight Commission consists of five members appointed by the Governor and four nonvoting legislative members. The act adds two investment expert members to the Oversight Commission, for a total of 11 members. Under the act, the Treasurer of State appoints one investment expert member and the Speaker of the House of Representatives and the President of the Senate jointly appoint the other investment expert member. Initial appointments must be made within 90 days of the effective date of that provision, and the act specifies the terms for those initial appointees. Each investment expert member must have the following qualifications:

- (1) Be a resident of this state;
- (2) Within the three years immediately preceding the appointment, not have been employed by the BWC or by any person, partnership, or corporation that has provided to the BWC services of a financial or investment nature, including the management, analysis, supervision, or investment of assets;
- (3) Have direct experience in the management, analysis, supervision, or investment of assets.

The act specifies that investment expert members vote only on investment matters. Under former law, terms of office for the Governor's appointees were for five years; the act shortens terms of office to three years, and terms of office for the investment expert members are also for three years. The act specifies that nothing in the act affects the term of any member of the Oversight Commission serving on the effective date of the act. The investment expert members are subject to the same term of office requirements and vacancy provisions as the Governor's appointees.

Under former law, the legislative members of the Oversight Commission received \$50 per meeting they attended. The act eliminates this payment. The act also specifies that an investment expert member of the Oversight Commission receives \$2,000 per meeting the member attends, with a maximum of \$18,000 per year regardless of whether the member attends more than nine meetings that year. This is the same salary arrangement that applies to the Governor's appointees. Under continuing law, all members receive their reasonable and necessary expenses.



Under the act, the office of a member of the Oversight Commission is deemed vacant if the member is convicted of or pleads guilty to a felony, a theft offense as defined under continuing law (R.C. 2913.01), or a violation of the duties and restrictions specified in the Ohio Ethics Law (R.C. Chapter 102. and R.C. 102.02, 102.03, and 102.04) or of the offenses of bribery (R.C. 2921.02), perjury (R.C. 2921.11), falsification and related offenses (R.C. 2921.13), obstructing official business (R.C. 2921.31), theft in office and related offenses (R.C. 2921.41), having an unlawful interest in a public contract (R.C. 2921.42), soliciting or receiving improper compensation (R.C. 2921.43), or dereliction of duty (R.C. 2921.44). The vacancy must be filled in the same manner as the original appointment. Under the act, a person who has pleaded guilty to or been convicted of an offense of that nature is ineligible to be a member of the Oversight Commission. A member who receives a bill of indictment for any of the offenses specified above is automatically suspended from the Oversight Commission pending resolution of the criminal matter.

The act designates the Attorney General as the legal advisor for the Oversight Commission. Additionally, if a voting member of the Oversight Commission breaches the member's fiduciary duty to the BWC, under the act the Attorney General may maintain a civil action against the board²⁷⁸ member for harm resulting from that breach. Notwithstanding the designation of the Attorney General as legal advisor for the Oversight Commission, after being informed of an allegation that the entire Oversight Commission has breached its fiduciary duty, the Oversight Commission may retain independent legal counsel, including legal counsel provided by the Oversight Commission's fiduciary insurance carrier, to advise the board and to represent the board. The Attorney General may recover damages or be granted injunctive relief, which includes the enjoinder of specified activities and the removal of the member from the board. Any damages awarded shall be paid to the BWC. The authority to maintain a civil action created by the act is in addition to any authority the Attorney General possesses under any other provision of the Revised Code.

Chief Investment Officer

(R.C. 4123.441)

The act requires the BWC, with the advice and consent of the Oversight Commission, to employ a person or designate an employee of the BWC who is designated as a chartered financial analyst by the CFA Institute and who is licensed by the Division of Securities in the Department of Commerce ("Division") as a BWC chief investment officer to be the BWC Chief Investment

²⁷⁸ *The act inadvertently refers to "board" instead of "Oversight Commission."*

Officer. After 90 days after the effective date of this provision, the BWC may not employ a BWC chief investment officer who does not hold a valid BWC chief investment officer license issued by the Division. The Oversight Commission must notify the Division in writing of its designation and of any change in its designation within ten calendar days after the designation or change.

Under the act, the BWC Chief Investment Officer must reasonably supervise BWC employees who handle investment of assets of BWC funds with a view toward preventing violations of (1) the Ohio Securities Law (R.C. Chapter 1707.), (2) the Commodity Exchange Act (42 Stat. 998, 7 U.S.C. 1), (3) the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. 77a), (4) the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. 78a), and (5) the rules and regulations adopted under those statutes. The act specifies that this duty of reasonable supervision must include the adoption, implementation, and enforcement of written policies and procedures reasonably designed to prevent the BWC employees who handle investment of assets of the BWC funds from misusing material, nonpublic information in violation of those laws, rules, and regulations. The BWC Chief Investment Officer, under the act, is not considered to have failed to satisfy the officer's duty of reasonable supervision if the officer has done all of the following:

(1) Adopted and implemented written procedures, and a system for applying the procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by employees handling investments of assets of the BWC funds;

(2) Reasonably discharged the duties and obligations incumbent on the officer by reason of the established procedures and the system for applying the procedures when the officer had no reasonable cause to believe that there was a failure to comply with the procedures and systems;

(3) Reviewed, at least annually, the adequacy of the policies and procedures established pursuant to the act and the effectiveness of their implementation.

The act also requires the BWC Chief Investment Officer to establish and maintain a policy to monitor and evaluate the effectiveness of securities transactions executed on behalf of BWC.

Bureau of Workers' Compensation chief investment officer license

(R.C. 1707.01, 1707.164, 1707.165, 1707.17, 1707.19, 1707.20, 1707.22, 1707.23, 1707.25, 1707.261, 1707.431, 1707.44, and 1707.46)

The act provides for the Division to license the BWC Chief Investment Officer. Under the act, no person may act as a BWC chief investment officer unless the person is licensed and the BWC may not employ a BWC chief investment officer unless the officer holds a valid license. Conversely, the act prohibits the BWC Chief Investment Officer from acting as a dealer, salesperson, investment advisor, or investment advisor representative. It is unclear whether there is a criminal penalty for violating either prohibition.

"Bureau of Workers' Compensation chief investment officer" is defined by the act as an individual employed by BWC as a chief investment officer in a position that is substantially equivalent to chief investment officer.

The act requires that application for a BWC chief investment officer license be made by filing with the Division the information, materials, and forms specified in rules adopted by the Division. The Division is permitted to investigate any applicant for a license and may require any additional information as it considers necessary to determine the applicant's business repute and qualifications to act as a chief investment officer. If the application involves investigation outside of Ohio, the Division may require the applicant to advance sufficient funds to pay any of the actual expenses of the investigation. The Division is required to furnish the applicant with an itemized statement of the expenses the applicant is required to pay.

The Division must by rule require an applicant to pass an examination designated by the Division or achieve a specified professional designation unless the applicant acts as a BWC chief investment officer on the provision's effective date and has experience or equivalent education acceptable to the Division. If the Division finds that the applicant is of good business repute, appears to be qualified to act as a BWC chief investment officer, has complied with state law and rules governing the licensure of a BWC chief investment officer, and pays a \$50 licensing fee, the Division must issue a BWC chief investment officer license to the applicant.

The act provides that a license expires on the last day of each June. The license may be renewed by filing a renewal application with the Division and paying a \$50 renewal fee. The Division must give notice, without unreasonable delay, of its action on any renewal application.



The act permits the Division, under certain circumstances, to refuse to issue an initial license and to suspend, revoke, or refuse to renew an existing license. These actions may be taken under many of the same or similar circumstances for which the Division may take action under continuing law against a person seeking or holding a license the Division issues under continuing law. If the Division suspends the BWC Chief Investment Officer's license, it must notify BWC.

In addition to having the authority to refuse, suspend, or revoke a license under certain circumstances, under continuing law the Division is permitted to take certain actions whenever it appears to the Division that a person has engaged in, is engaged in, or is about to engage in an illegal practice or deceptive scheme in connection with the sale of securities or when acting as an investment adviser. The Division may also take action when it believes it to be in the best interests of the public and necessary for the protection of investors. The act allows the Division to take the same actions against the BWC Chief Investment Officer under the same circumstances.

Parallel to continuing law regarding state retirement system investment officers, if a court of common pleas grants an injunction against the BWC Chief Investment Officer, after consultation with the Attorney General, the Director of Commerce may ask the court to order the officer who is subject to the injunction to make restitution to the BWC damaged by the officer's Ohio Securities Law violation. The court may order the restitution if it is satisfied with the sufficiency of the Director's request and with the sufficiency of the proof of a substantial violation of that law, or of the use of any act, practice, or transaction declared to be illegal or prohibited or defined as fraudulent by that law, or Division rules adopted under that law, to the material prejudice of a state retirement system. A request for restitution may concern the same acts, practices, or transactions that were, or may later be, the subject of a Division action for a violation of the securities law.

The act prohibits the BWC Chief Investment Officer from doing any of the following:

- (1) Employing any device, scheme, or artifice to defraud the workers' compensation system;
- (2) Engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit on the workers' compensation system;
- (3) Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative;



(4) Knowingly failing to comply with any policy adopted regarding the officer established pursuant to the provisions described above under "**Chief Investment Officer.**"

The penalty for violating any of these prohibitions depends on the value of the funds or securities involved in the offense or the loss to the victim, and ranges from a fifth-degree felony to a first-degree felony, plus specified fines (see R.C. 1707.99, not in the act).

Continuing law provides that no rule, form, or order may be made, amended, or rescinded unless the Division finds that the action is necessary or appropriate, in the public interest, or for the protection of investors, clients, or prospective clients, and consistent with the purposes fairly intended by the policy and provisions of state law governing the Division's licensure of securities professionals. The act provides that a rule, form, or order also may be made, amended, or rescinded if the Division finds the action necessary or appropriate for the protection of the workers' compensation system.

Audits

(R.C. 4121.125 and 4123.47)

Former law required the Administrator to cause actuarial audits of the state insurance fund at least once every two years. The act requires that the audits be done annually and that the audits cover all other workers compensation funds (e.g., public works relief compensation, marine industry compensation, and the coal workers' "black lung" compensation funds).

To the continuing law requirement that the audits be conducted by recognized insurance actuaries, the act adds a requirement that the actuaries certify their audit. The act also requires the Administrator to make copies of the audits available to the public at cost.

Continuing law unchanged by the act allows the Oversight Commission to contract with outside firms to have actuarials and audits of the Workers' Compensation system conducted to measure the performance of the system. The act requires the Oversight Commission to have an independent auditor, at least once every ten years, conduct a fiduciary performance audit of the investment program of the BWC. That audit must include an audit of the investment policies of the Oversight Commission and investment procedures of the BWC. The Oversight Commission must submit a copy of that audit to the Auditor of State.

BWC, with the advice and consent of the Oversight Commission, also must employ an internal auditor under the act who reports directly to the Oversight



Commission on investment matters. The Oversight Commission may request and review internal audits conducted by the internal auditor.

Fiduciary requirements and conflict of interest

(R.C. 4121.126 and 4121.127)

Except as otherwise provided in the Workers' Compensation Law, the act prohibits any member of the Oversight Commission or BWC employee from having any direct or indirect interest in the gains or profits of any investment made by the Administrator or from receiving directly or indirectly any pay or emolument for the member's or employee's services. The act also prohibits any member or person connected with the BWC directly or indirectly, for self or as an agent or partner of others, from borrowing any of its funds or deposits or in any manner use the funds or deposits except to make current and necessary payments that are authorized by the Administrator. Additionally, no member of the Oversight Commission and no BWC employee can become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the BWC.

The act also prohibits the Administrator from making any investments through or purchases from, or otherwise do any business with, any individual who is, or any partnership, association, or corporation that is owned or controlled by, a person who within the preceding three years was employed by the BWC, a board member of, or an officer of the Oversight Commission, or a person who within the preceding three years was employed by or was an officer holding a fiduciary, administrative, supervisory, or trust position, or any other position in which such person would be involved, on behalf of the person's employer, in decisions or recommendations affecting the investment policy of the BWC, and in which such person would benefit by any monetary gain.

The act defines a "fiduciary" as a person who does any of the following: (1) exercises discretionary authority or control with respect to the management of the BWC or with respect to the management or disposition of its assets, (2) renders investment advice for a fee, directly or indirectly, with respect to money or property of the BWC, or (3) has discretionary authority or responsibility in the administration of the BWC. The act requires every fiduciary of the BWC to be bonded or insured for an amount of not less than \$1 million for loss by reason of acts of fraud or dishonesty. Except as provided below, under the act, a fiduciary must not cause the BWC to engage in a transaction, if the fiduciary knows or should know that such transaction constitutes any of the following, whether directly or indirectly:

(1) The sale, exchange, or leasing of any property between the BWC and a party in interest;

(2) Lending of money or other extension of credit between the bureau and a party in interest;

(3) Furnishing of goods, services, or facilities between the BWC and a party in interest;

(4) Transfer to, or use by or for the benefit of a party in interest, of any assets of the BWC;

(5) Acquisition, on behalf of the BWC, of any employer security or employer real property.

The act states that nothing in this provision prohibits any transaction between the BWC and any fiduciary or party in interest if all the terms and conditions of the transaction are comparable to the terms and conditions that might reasonably be expected in a similar transaction between similar parties who are not parties in interest, and the transaction is consistent with fiduciary duties under the Workers' Compensation Law.

Under the act a fiduciary must not do any of the following:

(1) Deal with the assets of the BWC in the fiduciary's own interest or for the fiduciary's own account;

(2) In the fiduciary's individual capacity or in any other capacity, act in any transaction involving the BWC on behalf of a party, or represent a party, whose interests are adverse to the interests of the BWC or to the injured employees served by the BWC;

(3) Receive any consideration for the fiduciary's own personal account from any party dealing with the BWC in connection with a transaction involving the assets of the BWC.

In addition to any liability that a fiduciary may have under any other provision, a fiduciary, with respect to BWC, is liable for a breach of fiduciary responsibility (1) if the fiduciary knowingly participates in or knowingly undertakes to conceal an act or omission of another fiduciary, knowing such act or omission is a breach, (2) if, by the fiduciary's failure to comply with the Workers' Compensation Law, the fiduciary has enabled another fiduciary to commit a breach, or (3) if the fiduciary has knowledge of a breach by another fiduciary of that fiduciary's duties under the Workers' Compensation Law, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.



Criminal records checks

(R.C. 109.579, 4123.444, and 4123.445)

The act prohibits the Administrator from entering into a contract with an investment manager for the investment of assets of the BWC funds if any employee of that investment manager who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime. Also, the act prohibits an investment manager who has entered into a contract with BWC for the investment of assets of BWC funds from contracting with a business entity for the investment of those assets if any employee of that business manager who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime. If, after a contract has been awarded to an investment manager or business entity for the investment of assets of BWC funds, the investment manager or business entity discovers that an employee who is handling the investment of those assets has been convicted of or pleaded guilty to a financial or investment crime, the investment manager or business entity immediately must notify the Administrator. A financial or investment crime means any of the following offenses: (1) any criminal offense involving theft, (2) receiving stolen property, (3) embezzlement, (4) forgery, (5) fraud, (6) passing bad checks, (7) money laundering, (8) drug trafficking, or (9) any criminal offense involving money or securities, as set forth under the laws governing the following offenses:

- (a) Arson and related offenses (R.C. Chapter 2909.);
- (b) Robbery, burglary, trespass, and safecracking (R.C. Chapter 2911.);
- (c) Theft and fraud (R.C. Chapter 2913.);
- (d) Gambling (R.C. Chapter 2915.);
- (e) Offenses against justice and public administration (R.C. Chapter 2921.);
- (f) Conspiracy, attempt, complicity, weapons control, and corrupt activity (R.C. Chapter 2923.);
- (g) Drug offenses (R.C. Chapter 2925.);
- (h) Any other law of this state, or the laws of any other state or of the United States that are substantially equivalent to the offenses listed directly above.

Before entering into a contract with an investment manager to invest BWC funds, the act requires the Administrator to request from any investment manager



with whom the Administrator wishes to contract for those investments a list of all employees who will be investing assets of BWC funds. Under the act, the Administrator is prohibited from entering into a contract with an investment manager who refuses to submit the list. The list must specify each employee's state of residence for the five years prior to the date of the Administrator's request. The Administrator also must request that the Superintendent of the Bureau of Criminal Identification and Investigation ("Superintendent") conduct a criminal records check as described below with respect to every employee the investment manager names in that list.

Similarly, after an investment manager enters into a contract with the Administrator to invest BWC funds and before an investment manager enters into a contract with a business entity to facilitate those investments, the act requires the investment manager to request from any business entity with whom the investment manager wishes to contract to make those investments a list of all employees who will be investing assets of the BWC funds. Under the act, an investment manager must not enter into a contract with a business entity who refuses to submit the list. The list must specify each employee's state of residence for the five years prior to the investment manager's request. The investment manager must forward to the Administrator the list received from the business entity. The Administrator must request that the Superintendent conduct a criminal records check as described below with respect to every employee the business entity names in that list. Upon receipt of the results of the criminal records check, the Administrator must forward a copy of those results to the investment manager.

If, after a contract has been entered into between the Administrator and an investment manager or between an investment manager and a business entity for the investment of assets of BWC funds, the investment manager or business entity wishes to have an employee who was not the subject of a criminal records check above invest assets of BWC funds, that employee also must be the subject of a criminal records check as described below prior to handling the investment of assets of those funds.

The act requires the Administrator to request that the Superintendent conduct a criminal records check through the Federal Bureau of Investigation ("FBI") as a part of the criminal records check for an employee if the employee has not been a resident of this state for the five-year period immediately prior to the time the criminal records check is requested or does not provide evidence that within that five-year period the Superintendent has requested information about the employee from the FBI in a criminal records check. The act permits, but does not require, the Administrator to make that request if the employee has been a resident of this state for at least that five-year period. If the Administrator requests information from the FBI, the act requires the Superintendent to request from the



FBI any information it has with respect to the person who is the subject of the request. The Superintendent must review or cause to be reviewed any relevant information that the Superintendent receives from the FBI.

The Administrator must provide to an investment manager, for each employee for whom a criminal records check must be performed, a copy of the form and standard impression sheet prescribed by the Superintendent to obtain fingerprint impressions. The investment manager must obtain the completed form and impression sheet either directly from each employee or from a business entity and forward the completed form and sheet to the Administrator, who must forward these forms and sheets to the Superintendent. The act requires any employee who receives a copy of the form and the impression sheet and who is requested to complete the form and provide a set of fingerprint impressions to complete the form or provide all the information necessary to complete the form and to complete the impression sheets by having the person's fingerprint impressions made at a county sheriff's office, a municipal police department, or any other entity with the ability to make fingerprint impressions. The office, department, or entity may charge the person a reasonable fee for making the impressions. The standard impression sheets the Superintendent prescribes may be in a tangible or electronic format, or in both tangible and electronic formats.

If the Superintendent receives (1) a request from the Administrator, (2) a completed form prescribed by the Superintendent, and (3) a set of fingerprint impressions, the Superintendent must conduct a criminal records check on employees of investment managers and business entities who will be handling the investment of BWC funds. The Superintendent must conduct the criminal records check in the same manner as the Superintendent conducts criminal records checks under continuing law to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to a financial or investment crime.

The Superintendent must forward the results of a criminal records check to the Administrator. Under the act, a determination whether any information exists that indicates that a person previously has been convicted of or pleaded guilty to a financial or investment crime is valid for the person who is the subject of that criminal records check for a period of one year after the date the Superintendent makes that determination.

The act requires the Superintendent to prescribe and charge a reasonable fee for providing a criminal records check. For each criminal records check the Administrator requests, at the time the Administrator makes a request, the Administrator must pay the prescribed fee to the Superintendent. If another request for a criminal records check is made for a person for whom a valid

determination is available, the Superintendent must provide the determination for a reduced fee.

Campaign contributions

(R.C. 3517.13 and 3517.151)

The act prohibits the Administrator and BWC employees from conducting any business with or awarding any contract, other than one awarded by competitive bidding, for the purchase of goods or services costing more than \$500 to either of the following:

(1) Any individual, partnership, association, including, without limitation, a professional association organized under the Professional Associations Law (R.C. Chapter 1785.), estate, or trust if the individual has made, or the individual's spouse has made, or any partner, shareholder, administrator, executor, or trustee, or the spouses of any of those individuals has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000 to the campaign committee of the Governor or Lieutenant Governor or to the campaign committee of any candidate for the office of governor or lieutenant governor.

(2) A corporation or business trust, except a professional association organized under the Professional Associations Law, if an owner of more than 20% of the corporation or business trust, or the spouse of the owner, has made, as an individual, within the two previous calendar years, taking into consideration only owners for all of such period, one or more contributions totaling in excess of \$1,000 to the campaign committee of the Governor or Lieutenant Governor or to the campaign committee of any candidate for the office of governor or lieutenant governor.

The act specifies that these provisions apply to an act or failure to act on or after the effective date of the provision.

Ethics disclosures

(R.C. 102.02 and 102.06; Section 502.04)

Under the act, the Administrator, the voting members of the Oversight Commission, and the BWC Chief Investment Officer must file a disclosure statement with the appropriate ethics commission. The act states that nothing in the act must be construed to limit the Ohio Ethics Commission's authority, responsibility, and powers under the Ohio Ethics Law (R.C. Chapter 102.) as it existed immediately prior to the effective date of this provision as applied to members of the Oversight Commission and BWC employees. Any authority,



power, or responsibilities of the Ohio Ethics Commission expressly created by the act are in addition to any authority, power, or responsibilities of the Commission in effect immediately prior to the effective date of this provision. Additionally, if the appropriate ethics commission is investigating a voting member of the Oversight Commission, the act permits the appropriate ethics commission to share information gathered in the course of the investigation with, or disclose the information to, the Attorney General and the Auditor of State.

DEPARTMENT OF YOUTH SERVICES

- Modifies how a joint board of county commissioners can pay for the maintenance and other expenses of district detention facilities by including among the methods any other method agreed upon by unanimous vote of the joint board of county commissioners.
- Eliminates the requirement that a community corrections facility not be meeting its minimum occupancy threshold before the Department of Youth Services may refer a child to the facility.
- Authorizes a committing court to consider a referral of a child by the Department to a community corrections facility on less than 45 days' notice to the court.

Payment of maintenance and other expenses of a district detention facility

(R.C. 2152.43)

Continuing law permits the board of trustees of a district detention facility to apply to the Department of Youth Services for assistance in defraying the cost of operating and maintaining the facility. Under law modified by the act, the current expenses of maintaining the facility not paid from funds made available from the Department or from a donation or bequest of any real or personal property, and the cost of ordinary repairs to the facility, must be paid by each county in accordance with one of the following methods as approved by the joint board of county commissioners:

(1) In proportion to the number of children from that county who are maintained in the facility during the year;



(2) By a levy submitted by the joint board of county commissioners and approved by the electors of the district;

(3) In proportion to the taxable property of each county, as shown by its tax duplicate;

(4) In any combination of methods for payment described in (1), (2), or (3) above.

The act modifies (4) above by providing that the current expenses of maintaining the facility and the cost of ordinary repairs may be paid in any other method agreed upon by unanimous vote of the joint board of county commissioners.

Referral of children by the Department of Youth Services to community corrections facilities

(R.C. 5139.36)

Former law allowed the Department of Youth Services to make a referral of a child in its custody to a community corrections facility if the facility was not meeting its minimum occupancy threshold as established by the Department. The Department was required to notify the committing court of its intention to place a child in a community corrections facility at least 45 days before the referral. The act eliminates the requirement that a community corrections facility not be meeting the minimum occupancy threshold before the Department may refer a child to the facility, and it authorizes the committing court to consider a referral on less than 45 days' notice to the court.

MISCELLANEOUS

- Imposes contract, record-keeping, auditing, and other requirements on persons that receive money from governmental entities for the provision of services benefiting individuals or the public.
- Provides civil remedies for the recovery of money due to a governmental entity under any contract the governmental entity enters into with a person for the provision of goods, services, or construction.
- Creates the Government Contracting Advisory Council.



- Clarifies the Ohio Legal Assistance Foundation's ability to utilize its 4.5% administrative set-aside of Legal Aid Fund moneys for administering all filing fee surcharges and the interest-bearing trust account (IOTA) program, in addition to already recognized IOLTA accounts of an attorney, law firm, or professional legal association.
- Requires the rules of the Ohio Legal Assistance Foundation governing the administration of the Legal Aid Fund, including programs regarding filing fee surcharges and IOLTA accounts, to be established in accordance with the Administrative Procedure Act.
- Establishes a 15% set-aside of moneys in the Legal Aid Fund for the Legal Assistance Foundation Fund.
- Increases the surcharge (that is, additional filing fee) on civil actions not in a small claims division (from \$15 to \$26) and on civil actions in a small claims division (from \$7 to \$11) that is used for the charitable public purpose of providing financial assistance to legal aid societies.
- Requires the Treasurer of State to deposit 4% of the money collected through the additional filing fees to the credit of the Civil Case Filing Fee Fund, and 96% of the money to the Legal Aid Fund, instead of 100% to the Legal Aid Fund as required under prior law.
- Creates the Civil Case Filing Fee Fund for the purpose of appointing assistant state public defenders and for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office.
- Authorizes the Ohio Community Service Council to accept donations, sponsor events, and sell promotional items.
- Expresses the intent of the General Assembly to consolidate specified regulatory boards and commissions into the Departments of Health, Commerce, and Public Safety, and requires the directors of these departments, the executive directors of the affected boards, and the Directors of Administrative Services and Budget and Management to appoint a transition team to address the details of, and submit recommendations regarding, the consolidations.

- Permits the use of appropriations to satisfy judgments, settlements, and administrative awards made against the state.
- Authorizes the conveyance of certain real estate located in Athens County to Hocking.Athens.Perry Community Action.
- Makes a federal home loan bank eligible to be a qualified trustee for the safekeeping of securities pledged by trust companies engaging in trust business in Ohio.
- Creates the Ohio CASA/GAL Study Committee to compile and analyze data on the provision of advocacy services to abused, dependent, and neglected children by public defenders and appointed counsel and by Ohio CASA/GAL Association programs.
- Makes changes to the applicability of Ohio's Miscellaneous Bond Proceedings Law.

Financial accountability of persons that contract with the state or a political subdivision

Overview

This portion of the act addresses financial accountability with respect to persons that contract with a state agency or any political subdivision of the state for the provision of goods, services, or construction. The act distinguishes between two scenarios:

--With respect to persons who receive \$25,000 or more in a lump sum, or \$75,000 or more over the course of a year, from a governmental entity for the provision of services benefiting individuals or the public (subject to a number of exemptions), the act imposes contract, record-keeping, auditing, and other requirements. It authorizes civil remedies for the recovery of money received by the person in excess of the contract payment earned. It provides the Attorney General and the Auditor of State with rule-making functions related to the implementation of the act, and creates the Government Contracting Advisory Council to review those rules and make recommendations regarding their adoption, amendment, or repeal.

--With respect to persons who receive money from governmental entities for the provision of goods, construction, or any other services under contracts to

which some or all of the above-described requirements do not apply, the act authorizes civil remedies for the recovery of any money received by the person that is not earned under the terms of the contract with the governmental entity.

Contracts for the provision of services benefiting individuals or the public

(R.C. 9.23 to 9.239)

Definitions (R.C. 9.23). The act introduces a number of definitions that are instrumental to its application and implementation. These definitions are as follows:

(1) "**Recipient**" means a person that enters into a contract with a governmental entity under this portion of the act.

(2) "**Governmental entity**" means a state agency or a political subdivision of the state. "**State agency**" means any organized body, office, agency, institution, or other entity established by Ohio law for the exercise of any function of state government. "**Political subdivision**" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(3) "**Contract payment earned**" means payment pursuant to a contract entered into under the act for direct costs actually incurred in performing the contract, up to the minimum percentage of money that is to be expended on the recipient's direct costs, as specified in the contract, plus allocable nondirect costs associated with those direct costs.

(4) "**Direct costs**" means the costs of providing services that directly benefit a patient, client, or the public and that are set forth in the contract entered into under the act. The costs of any financial review or audit required under the act are *not* considered "direct costs."

(5) "**Minimum percentage of money that is to be expended on the recipient's direct costs**" means the percentage of the total amount of the contract entered into under the act that, at a minimum, has to be expended on the recipient's direct costs in performing the contract in order for the recipient to earn the total amount of the contract.

(6) "**Allocable nondirect costs**" means the amount of nondirect costs allocated as a result of actual expenditures on direct costs. "Allocable nondirect costs" are calculated as follows: direct costs actually incurred for the provision of services pursuant to a contract entered into under the act, divided by the minimum percentage of money that is to be expended on the recipient's direct costs, as specified in the contract, minus the direct costs actually incurred.



(7) "**Contracting authority**" of a governmental entity means the director or chief executive officer, in the case of a state agency, or the legislative authority, in the case of a political subdivision.

(8) A **judgment** is "**uncollectible**" if, at least 90 days after the judgment is obtained, the full amount of the judgment has not been collected and either a settlement agreement between the governmental entity and the recipient has not been entered into or a settlement agreement has been entered into but has not been materially complied with.

Contract requirement: general application (R.C. 9.231(A)(1) and (2)). Generally, the act prohibits a governmental entity from disbursing money totaling **\$25,000 or more** in a lump sum to any person for the provision of services for the primary benefit of individuals or the public--and *not* for the primary benefit of a governmental entity or the employees of a governmental entity--unless the contracting authority of the governmental entity first enters into a written contract with the person.²⁷⁹ The contract must be signed by the person or by an officer or agent of the person authorized to legally bind the person and must embody *all* of the requirements and conditions set forth in the act. (See "**Limited application of the act to certain contracts**," below.)

If the disbursement of money occurs over the course of a governmental entity's fiscal year, rather than in a lump sum, the contracting authority of the governmental entity is required to enter into the written contract with the person at the point during the governmental entity's fiscal year that **at least \$75,000** has been disbursed by the governmental entity to the person. Thereafter, the contracting authority must enter into the written contract with the person at the beginning of the governmental entity's fiscal year, if, during the immediately preceding fiscal year, the governmental entity disbursed to that person an aggregate amount totaling at least \$75,000.

Also, if the money was disbursed by or through more than one state agency to the person for the provision of services to the same population, the contracting authorities of those agencies are to determine which one of them will enter into the written contract with the person.

²⁷⁹ *The act specifies that, with respect to a nonprofit association, corporation, or organization established for the purpose of providing educational, technical, consulting, training, financial, or other services to its members in exchange for membership dues and other fees, any of the services provided to a member that is a governmental entity is to be considered, for purposes of this provision, a service "for the primary benefit of a governmental entity or the employees of a governmental entity" (R.C. 9.231(C)).*

Exemptions (R.C. 9.231(B)). This contract requirement does *not* apply if the money is disbursed to a person pursuant to a contract with the United States or a governmental entity under any of the following circumstances:

(1) The person receives the money directly or indirectly from the United States, and no governmental entity exercises any oversight or control over the use of the money.

(2) The person receives the money solely in return for the performance of services intended to help preserve public health or safety under circumstances requiring immediate action as a result of a natural or man-made emergency.

(3) The person receives the money *solely* in return for the performance of one or more of the following types of services:

(a) Medical, therapeutic, or other health-related services provided by a person *if* the amount received is a set fee for each time the person provides the services, is determined in accordance with a fixed rate per unit of time, or is a capitated rate, *and* the fee or rate is reasonable and customary in the person's trade or profession;

(b) Medicaid-funded services, including administrative and management services, provided pursuant to a contract or Medicaid provider agreement that meets the requirements of the Medicaid program established under R.C. Chapter 5111.;

(c) Services, other than administrative or management services or any of the services described in (a) or (b), above, that are commonly purchased by the public at an hourly rate or at a set fee for each time the services are provided, *unless* the services are performed for the benefit of children, persons who are eligible for the services by reason of advanced age, medical condition, or financial need, or persons who are confined in a detention facility (as defined in R.C. 2921.01), *and* the services are intended to help promote the health, safety, or welfare of those parties;

(d) Educational services provided by a school to children eligible to attend that school. (For purposes of this provision, "school" means any school operated by a school district board of education, any community school established under state law, or any nonpublic school for which the State Board of Education prescribes minimum education standards.)

(e) Services provided by a foster home (as defined in R.C. 5103.02);

(f) "Routine business services other than administrative or management services," as that term is defined by the Attorney General by rule adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.);

(g) Services to protect the environment or promote environmental education that are provided by a nonprofit entity or services to protect the environment that are funded with federal grants or revolving loan funds and administered in accordance with federal law.

Terms of the contract (R.C. 9.232). A contract entered into under the act must, at a minimum, set forth all of the following:

(1) The minimum percentage of money that is to be expended on the recipient's direct costs;

(2) The records that a recipient must maintain to document direct costs;

(3) If some of the recipient's obligations under the contract involve the performance of any of the types of services described in (3)(a), (c), or (f), above, the name and telephone number of the individual designated by the governmental entity as the contact for obtaining approval of contract amounts (see "**Inspection of records; subcontractors**," below);

(4) The financial review and audit requirements established by the act and by rules of the Auditor of State adopted under the act;²⁸⁰

(5) The provisions established by rules of the Attorney General adopted under the act;

(6) Permissible dispositions of money received by a recipient in excess of the contract payment earned, if the excess is not to be repaid to the governmental entity.

Payment under the contract (R.C. 9.233). The act states that a recipient is entitled to the contract payment earned, but is never entitled to *more than* the contract payment earned. The following example illustrates how the "contract payment earned" amount is determined:

Suppose that the Department of Health enters into a \$100,000 contract with Company X for services. The contract, as required by the act, provides for a

²⁸⁰ *With respect to any of the contracts described under "**Limited application of the act to certain contracts**," below, the contract must include any financial compliance requirements established for purposes of that contract (R.C. 9.232(D)).*

minimum percentage of the total amount of the contract that Company X must expend on its direct costs in performing the contract, which in this case we will designate as 90%, or \$90,000. Say that Company X actually does spend \$90,000 on the direct costs that are set forth in the contract. So its "contract payment earned" is the sum of Company X's direct costs (\$90,000) plus its allocable nondirect costs associated with those direct costs. Recall that "allocable nondirect costs" is a defined term, calculated by dividing the direct costs actually incurred by the contract's minimum percentage of money that is to be expended on the direct costs, and then subtracting the direct costs incurred. In this case, the allocable nondirect costs equal $(\$90,000/0.90)-\$90,000$, which works out to $\$100,000-\$90,000$, or \$10,000. So the contract payment earned is the \$90,000 in direct costs plus \$10,000 in allocable nondirect costs, or \$100,000. But if Company X spent less than \$90,000 on direct costs, the total "contract payment earned" that it could receive would be less than the full \$100,000 amount of the contract. And if it spent more than \$90,000 on direct costs, it would not receive more than \$100,000 under the contract, because the act caps the amount of direct costs that can be counted toward the "contract payment earned" at the contract's minimum percentage of the total amount of the contract that is to be expended on direct costs.

In order to determine the contract payment earned, all financial books and records open to inspection pursuant to the act are to be held to standards consistent with generally accepted accounting principles. Recipients are required to repay any money received in excess of the contract payment earned to the governmental entity or, if a different disposition is provided for in the recipient's contract with the governmental entity, dispose of that money in accordance with the terms of the contract.

Record-keeping requirements (R.C. 9.234(A)(1) and (2)). Generally, the act requires recipients--with respect to any money received *prior* to the performance of the recipient's obligations under the contract with the governmental entity *and* any money received in excess of the contract payment earned--to keep current and accurate records of the receipt and use of the money in a manner consistent with the contract. With respect to any money received *after* the recipient has performed its obligations under the contract, current and accurate records of the recipient's expenditures on direct costs must be kept.

Audit and financial review requirements (R.C. 9.234(A)(3), (B), (C), and (D)). Under the act, recipients must annually provide the contracting authority of the governmental entity with an audit report or financial review, if a financial audit or review is required by the act, or financial statements, major categories of

expenditure of the money, and a summary of the activities for which the recipient used the money.²⁸¹

As indicated by the following chart, the type of financial reporting required by the act is dependent upon the amount of money a recipient receives in a fiscal year pursuant to *one or more* contracts entered into under the act.²⁸²

AMOUNT OF MONEY RECEIVED IN A FISCAL YEAR	TYPE OF FINANCIAL REPORTING REQUIRED	CAN THE REQUIREMENT BE WAIVED?
At least \$100,000 but less than \$300,000	Financial review	Yes, if the contracting authority of each governmental entity from which the recipient received money agrees to the waiver.
At least \$300,000 but less than \$500,000	Financial review	No
\$500,000 or more	Financial audit	No

The act requires that the financial reviews be performed by an independent public accounting firm and in accordance with the financial review standards of the American Institute of Certified Public Accountants. The financial review contract between the recipient and the firm must provide that the state is an intended third-party beneficiary of the contract.

Financial audits must be performed according to generally accepted auditing standards by an independent public accounting firm. The audit also must comply with any rules adopted by the Auditor of State under the act. The engagement letter between the recipient and the firm must provide that the state is an intended third-party beneficiary of the contract. The act states that an audit performed pursuant to the federal "Single Audit Act of 1984" is sufficient if the state is an intended third-party beneficiary of the audit contract.

²⁸¹ *With respect to any of the contracts described under "**Limited application of the act to certain contracts**," below, a recipient must provide an audit report or financial review if the performance of a financial audit or review is a compliance requirement established for purposes of that contract (R.C. 9.234(A)(3)(a)(ii)).*

²⁸² *The references in this part of the act to fiscal year mean the recipient's fiscal year (R.C. 9.234(C)(3)).*

A financial audit meeting the requirements of the act satisfies the act's financial review requirements. In addition, an audit conducted by the Auditor of State pursuant to any other provision of the Revised Code is sufficient for purposes of the act. The act states that it does not in any way limit the authority of the Auditor of State to conduct audits pursuant to those provisions.

Inspection of records; subcontractors (R.C. 9.235). The act generally provides that the financial books and records of a recipient, and the financial books and records of any person with which the recipient contracts for the performance of the recipient's obligations under the recipient's contract with the governmental entity (a "subcontractor"), are open to inspection by the governmental entity and by the state from the time the recipient first applies for payment under the contract. If the recipient is paid before the performance of its obligations under the contract, the financial books and records of the recipient and of any subcontractor are open to inspection from the first anniversary of the payment or from any earlier date that the contract may provide.

These provisions do not apply, however, to any person that contracts with the recipient solely for the performance of *some* of the recipient's obligations under the recipient's contract with the governmental entity that directly benefit the recipient's patients or clients, *if* either of the following applies:

(1) The services provided by the person are (a) medical, therapeutic, or other health-related services, (b) services commonly purchased by the public at an hourly rate or set fee, or (c) routine business services other than administrative or management services, that are exempt from the act's contract requirement (see "**Exemptions**," above) **and** the full amount of the person's contract constitutes direct costs for the recipient and is reasonable and customary in the person's trade or profession. The amount of the person's contract with the recipient is considered "**reasonable and customary in the person's trade or profession**" if (i) the amount is equal to or less than the maximum amount for those services specified in the recipient's contract with the governmental entity, (ii) the amount was approved by the governmental entity after the recipient entered into the contract with the governmental entity, or (iii) a maximum amount for those services was specified in the recipient's contract with the governmental entity, the recipient's original contract with a person for the performance of those services was subsequently canceled or otherwise unfulfilled, the recipient entered into a replacement contract with another person, and the amount of that contract is not more than 25% above the maximum amount for the services specified in the recipient's contract with the governmental entity.

(2) The services provided by the person are (a) Medicaid-funded services, (b) educational services, or (c) services provided by a foster home, that are exempt from the act's contract requirement (see "**Exemptions**," above).

Generally, if a recipient contracts with another person for the performance of some or all of the recipient's obligations under the recipient's contract with the governmental entity, the recipient is entitled to claim spending by the subcontractor as direct costs *only* to the extent the subcontractor has spent money on direct costs in the performance of the recipient's obligations and *only* if the subcontractor complies with all of the terms and conditions relating to the performance that the recipient is required to comply with under the contract with the governmental entity. These conditions do not apply, however, with respect to any person described in (1) or (2), above.

The act states that these provisions cannot be construed as making any record of the receipt or expenditure of nonpublic money a public record. And that the authority of the Auditor of State to conduct audits or other investigations when public money is commingled with nonpublic money is in no way limited.

Recovery (R.C. 9.236(A)). The act states that a recipient is liable to repay to the governmental entity any money received in excess of the contract payment earned. To recover this excess, it authorizes civil actions and permits the governmental entity to void certain contracts.

Civil actions (R.C. 9.236(B) and (C)). Under the act, a governmental entity may bring a civil action for the recovery of money due to the governmental entity from a recipient. In such an action, any person with which the recipient has contracted for the performance of the recipient's material obligations to a group of beneficiaries under the recipient's contract with the governmental entity may be made a party defendant *if* the person is unable to demonstrate to the satisfaction of the governmental entity that the person has materially complied with the terms of the contract with the recipient. In that event, the person may be made a party defendant and the governmental entity may obtain a judgment against the person.

If a governmental entity obtains a judgment against a recipient in a civil action and the judgment is uncollectible, the governmental entity may recover from the person with which the recipient contracted an amount not exceeding the lesser of (1) the unsatisfied amount of the judgment or (2) the total amount received by the person from the recipient minus the total amount spent by the person on direct costs for services actually performed and retained by the person as allocable nondirect costs associated with those direct costs. Additionally, if a governmental entity obtains a judgment against a recipient or against a person with which the recipient contracted and that judgment debtor does not voluntarily pay the amount of the judgment, the judgment debtor is precluded from contracting with a governmental entity to the extent provided in ongoing law for a debtor against whom a finding of recovery has been issued (R.C. 9.24(A) and (B)).

Voided contracts (R.C. 9.236(D) and (E)). In addition to the remedies mentioned above, a governmental entity may void the following contracts:

--*Contracts between a recipient and a subcontractor.* A contract between a recipient and another person for the performance by the other person of the recipient's obligations under the recipient's contract with the governmental entity may be voided by the governmental entity to the extent that the other person has not yet performed its obligations under the contract or cannot demonstrate that the money it received was expended on direct costs or retained as allocable nondirect costs.

--*Contracts between a recipient and an "insider" or other person.* If a recipient is liable to repay money to a governmental entity and the judgment obtained by the governmental entity against the recipient is uncollectible, then in addition to the remedies described above, and after the governmental entity has obtained a judgment against any necessary third party, the governmental entity may void any of the following contracts:

(1) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and a director, trustee, or officer of the recipient or a business in which a director, trustee, or officer of the recipient has a material financial interest, if *either* of the following applies:

(a) The recipient has paid substantial value for property received and the property can be returned to the other person. If the property has experienced only normal wear and tear, the person is liable to the governmental entity for the full amount the recipient paid for the property; otherwise, the person is liable to the governmental entity only for the market value of the property.

(b) The person with which the recipient contracted has received money that the recipient obtained pursuant to the contract with the governmental entity and the money was not expended on direct costs or retained as allocable nondirect costs. In such a case, the governmental entity may void the contract to the extent the money was not expended on direct costs or retained as allocable nondirect costs, and the person is liable to the governmental entity for that amount.

(2) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and an employee of the recipient or a business in which an employee of the recipient has a material financial interest, *if* the employee has direct knowledge of the use of the money that the recipient obtained pursuant to the contract with the governmental entity and either (a) or (b), above, applies.

(3) A contract between the recipient and another person pursuant to which the recipient has paid or agreed to pay money to the other person, to the extent that the other person has not yet performed its obligations under the contract;

(4) A contract made not more than one year before the judgment against the recipient became uncollectible between the recipient and a person other than the governmental entity if the other person has not given or agreed to give consideration of reasonable and substantial value for the consideration given by the recipient.

Limited application of the act to certain contracts (R.C. 9.231(A)(3)).

Some contracts between a governmental entity and a recipient that are entered into under the act are not subject to *all* of the act's requirements. More specifically, requirements and conditions of the act relating to "direct costs" or "contract payment earned," including the record-keeping, payment, and recovery provisions described above, do *not* apply with respect to the following:

(1) Contracts to which all of the following apply:

(a) The amount received for the services is a set fee for each time the services are provided, is determined in accordance with a fixed rate per unit of time or per service, or is a capitated rate, and the fee or rate is established by competitive bidding or by a market rate survey of similar services provided in a defined market area. The survey may be one conducted by or on behalf of the governmental entity or an independent survey accepted by the governmental entity as statistically valid and reliable.

(b) The services are provided in accordance with standards established by state or federal law for their delivery, which standards are enforced by the federal government, a governmental entity, or an accrediting organization recognized by the federal government or a governmental entity.

(c) Payment for the services is made after the services are delivered and upon submission to the governmental entity of an invoice or other claim for payment as required by any applicable local, state, or federal law or, if no such law applies, by the terms of the contract.

(2) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that meets all of the following requirements:

(a) The program calculates the reimbursement rate on the basis of the previous year's experience or in accordance with an alternative method set forth in rules adopted by the Department of Job and Family Services.



(b) The reimbursement rate is derived from a breakdown of direct and indirect costs.

(c) The program's guidelines describe types of expenditures that are allowable and not allowable under the program and delineate which costs are acceptable as direct costs for purposes of calculating the reimbursement rate.

(d) The program includes a uniform cost reporting system with specific audit requirements.

(3) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that calculates the reimbursement rate on a fee for service basis in compliance with the U.S. Office of Management and Budget Circular A-87, as revised May 10, 2004.

(4) Contracts for services that are paid pursuant to the earmarking of an appropriation made by the General Assembly for that purpose.

Rule-making requirements: Attorney General (R.C. 9.237). The Attorney General is required to adopt rules in accordance with the Administrative Procedure Act governing the terms of any contract entered into under the act. The rules must set forth all of the following:

(1) A definition of permissible components of direct costs, including a list of expenditures that may never be included in direct costs and a nonexclusive list of expenditures that may be included in direct costs pursuant to agreement of the parties;

(2) Permissible methods by which a recipient may keep records documenting direct costs and how long those records must be retained;

(3) Remedies not inconsistent with those provided under the act (see "**Recovery**," above) in the event of a breach of the contract;

(4) Terms to be included in contracts between recipients and persons other than the governmental entity, including notice of the remedies available to the governmental entity if the money under the contract with the governmental entity is not expended on direct costs or retained as allocable nondirect costs,²⁸³

²⁸³ *With respect to any of the contracts described under "**Limited application of the act to certain contracts**," above, contracts between recipients and persons other than the governmental entity must include notice of the remedies available to the governmental entity if the money under the contract with the governmental entity is not earned under the terms of the contract with the governmental entity (R.C. 9.237(D)).*

(5) Any other provisions the Attorney General considers necessary to carry out the purposes of the act.

Rule-making requirements: Auditor of State (R.C. 9.238). The Auditor of State is required to prescribe a single form of the financial reviews required by the act to be used for all governmental entities. The Auditor of State may adopt rules in accordance with the Administrative Procedure Act governing the form and content of the audit reports required by the act and prescribe a single form of the report to be used for all governmental entities. Upon request made by a recipient, the Auditor of State must, to the extent possible, require all governmental entities that have entered into a contract with that recipient to accept a particular audit report.

Government Contracting Advisory Council (R.C. 9.239). The act creates the Government Contracting Advisory Council.²⁸⁴ It requires the Attorney General and Auditor of State to consult with the Council on the performance of their rule-making functions under the act and to consider any recommendations of the Council.²⁸⁵

The Council consists of the following members or their designees:

- (1) The Attorney General;
- (2) The Auditor of State;
- (3) The Director of Administrative Services;
- (4) The Director of Aging;
- (5) The Director of Alcohol and Drug Addiction Services;
- (6) The Director of Budget and Management;

²⁸⁴ *The act states that the Council is not subject to the Sunset Review Committee Law (R.C. 101.82 to 101.87).*

²⁸⁵ *The act also requires the Director of Job and Family Services to annually report to the Council the cost methodology of the Medicaid-funded services described in R.C. 9.231(A)(3)(d). That provision refers to "services that are paid pursuant to the earmarking of an appropriation made by the General Assembly for that purpose." In the previous version of H.B. 66, the services described in R.C. 9.231(A)(3)(d) were certain Medicaid-funded services authorized by the Department of Job and Family Services by rule. It appears, therefore, that the act's reference to R.C. 9.231(A)(3)(d) is an error. As such, what the act requires the Director to report to the Council is unclear.*

- (7) The Director of Development;
- (8) The Director of Job and Family Services;
- (9) The Director of Mental Health;
- (10) The Director of Mental Retardation and Developmental Disabilities;
- (11) The Director of Rehabilitation and Correction;
- (12) The Administrator of Workers' Compensation;
- (13) The executive director of the County Commissioners' Association of Ohio;
- (14) The president of the Ohio Grantmakers Forum;
- (15) The president of the Ohio Chamber of Commerce;
- (16) The president of the Ohio State Bar Association;
- (17) The president of the Ohio Society of Certified Public Accountants;
- (18) The executive director of the Ohio Association of Nonprofit Organizations;
- (19) The president of the Ohio United Way;
- (20) One additional member appointed by the Attorney General; and
- (21) One additional member appointed by the Auditor of State.²⁸⁶

The Attorney General or the Attorney General's designee is to be the chairperson of the Council. The Council is required to meet at least once every two years to review the rules adopted under the act and to make recommendations to the Attorney General and Auditor of State regarding the adoption, amendment, or repeal of those rules. The Council must also meet at the request of the Attorney General or Auditor of State.

²⁸⁶ *If an agency or organization represented on the Council ceases to exist in the form it has on the effective date of this provision, the successor entity is to be represented in its place. If there is no successor entity, or if it is not clear what entity is the successor, the Attorney General is required to designate an agency or organization to be represented in place of the agency or organization originally represented on the Council.*

The act specifies that (1) the two appointed members are to serve three-year terms, (2) original appointments are to be made not later than 60 days after the effective date of this provision, and (3) any vacancies are to be filled in the same manner as the original appointment. The Office of the Attorney General is required to provide necessary staff, facilities, supplies, and services to the Council. Council members are to serve without compensation or reimbursement.

Contracts for the provision of goods, construction, and all other services

(R.C. 9.241)

Application. This portion of the analysis deals with the act's recovery provisions that do *not* apply with respect to any contract that (1) is entered into by a governmental entity pursuant to the act's contract requirements described above (R.C. 9.231) *and* (2) is subject to the recovery provisions included in those requirements (R.C. 9.236).

Definitions. For this portion of the act, "**recipient**" means a person that enters into or is awarded a contract with a governmental entity for the provision of goods, services, or construction. "**Governmental entity**" and "**a judgment is uncollectible**" have the same meanings as set forth above.

Recovery. The act states that a recipient is liable to repay to a governmental entity any money received but not earned under the terms of a contract with the governmental entity. It authorizes civil actions and permits the governmental entity to void certain contracts.

Civil actions. Under the act, a governmental entity may bring a civil action for the recovery of money due to the governmental entity from a recipient. In such an action, any person with which the recipient has contracted for the performance of the recipient's material obligations under the recipient's contract with the governmental entity may be made a party defendant *if* the person is unable to demonstrate to the satisfaction of the governmental entity that the person has materially complied with the terms of the contract with the recipient. In that event, the person may be made a party defendant and the governmental entity may obtain a judgment against the person.

If a governmental entity obtains a judgment against a recipient in a civil action and the judgment is uncollectible, the governmental entity may recover from the person with which the recipient contracted an amount not exceeding the lesser of (1) the unsatisfied amount of the judgment or (2) the total amount received by the person from the recipient minus the total amount earned by the person under the terms of the recipient's contract with the governmental entity. Additionally, if a governmental entity obtains a judgment against a recipient or

against a person with which the recipient contracted and that judgment debtor does not voluntarily pay the amount of the judgment, the judgment debtor is precluded from contracting with a governmental entity to the extent provided in ongoing law for a debtor against whom a finding of recovery has been issued (R.C. 9.24(A) and (B)).

Voided contracts. In addition to the remedies mentioned above, a governmental entity may void the following contracts:

--Contracts between a recipient and subcontractor. A contract between a recipient and another person for the performance by the other person of the recipient's obligations under the recipient's contract with the governmental entity may be voided by the governmental entity to the extent that the other person has not yet performed its obligations under the contract.

--Contracts between a recipient and an "insider" or other person. If a recipient is liable to repay money to a governmental entity under this portion of the act and the judgment obtained by the governmental entity against the recipient is uncollectible, then in addition to the other remedies previously mentioned, and after the governmental entity has obtained a judgment against any necessary third party, the governmental entity may void any of the following contracts:

(1) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and a director, trustee, or officer of the recipient or a business in which a director, trustee, or officer of the recipient has a material financial interest, if either of the following applies:

(a) The recipient has paid substantial value for property received and the property can be returned to the other person. If the property has experienced only normal wear and tear, the person is liable to the governmental entity for the full amount the recipient paid for the property; otherwise, the person is liable to the governmental entity only for the market value of the property.

(b) The person with which the recipient contracted has received money that the recipient obtained pursuant to the contract with the governmental entity and has used the money other than for the performance of the contract. In such a case, the governmental entity may void the contract to the extent that the person has used the money other than for the performance of the contract, and the person is liable to the governmental entity for that amount.

(2) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and an employee of the recipient or a business in which an employee of the recipient has a material financial interest, if the employee has direct knowledge of the use of the money

that the recipient obtained pursuant to the contract with the governmental entity and either (a) or (b) , above, applies.

(3) A contract between the recipient and another person pursuant to which the recipient has paid or agreed to pay money to the other person, to the extent that the other person has not yet performed its obligations under the contract;

(4) A contract made not more than one year before the judgment against the recipient became uncollectible between the recipient and a person other than the governmental entity if the other person has not given or agreed to give consideration of reasonable and substantial value for the consideration given by the recipient.

Application

(Section 559.03)

The act's requirements with respect to contracts for the provision of services benefiting individuals or the public apply only to disbursements of money that occur on or after January 1, 2006. The recovery mechanisms provided by the act with respect to contracts for the provision of goods, construction, and all other services apply only to contracts that are entered into or awarded on or after the effective date of this portion of the act (90 days).

Legal Aid Fund

(R.C. 120.52)

Continuing law provides that the Legal Aid Fund is for the charitable public purpose of providing financial legal assistance to legal aid societies that provide civil legal services to indigents. The Legal Aid Fund is required to contain all funds credited to it by the Treasurer of State from municipal courts, county courts, courts of common pleas, interest earned on funds deposited in an interest-bearing trust account of an attorney, law firm, or legal professional association (IOLTA), or a depository institution. The act provides that the Legal Aid Fund is also required to include funds from interest earned on interest-bearing trust accounts of title insurance agents or title insurance companies (IOTA).

Continuing law requires the State Public Defender, through the Ohio Legal Assistance Foundation (OLAF), to administer the payment of moneys out of the Legal Aid Fund. Four and one-half per cent of the moneys in the Fund must be reserved for the actual, reasonable costs of administering laws governing legal aid society funding. The act requires that this four and one-half per cent also be reserved for the actual, reasonable costs of administering certain provisions of law dealing with municipal court costs, county court costs, court of common pleas

costs, and IOTA accounts. (R.C. 1901.26, 1907.24, and 2303.201 provide for certain court costs to be collected for the Legal Aid Fund but also include other special court costs.)

Continuing law also requires the OLAF to establish rules governing the administration of the Legal Aid Fund, including the programs regarding interest on IOLTA accounts. The act requires that the OLAF rules governing the administration of the Legal Aid Fund include programs established under the provisions of law cited in the preceding paragraph dealing with certain municipal court costs, county court costs, and court of common pleas costs to be collected for the Legal Aid Fund. The act requires the rules governing the administration of the Legal Aid Fund, including the programs regarding interest on IOLTA accounts and the programs established under those provisions of law dealing with municipal court costs, county court costs, and court of common pleas costs, to be established in accordance with the Administrative Procedure Act.

Ohio Legal Assistance Foundation (OLAF)

(R.C. 120.53)

Ongoing law allows a legal aid society that operates within the state to apply to the OLAF for financial assistance from the Legal Aid Fund to be used for the funding of the society during the calendar year following the calendar year in which the application is made. The OLAF is required to allocate moneys contained in the Legal Aid Fund twice each year for distribution to applicants that filed their applications in the previous calendar year and were deemed to be eligible applicants. All moneys contained in the Fund on January 1 of a calendar year must be allocated, after deduction of the costs of administering the provisions governing legal aid society funding and the programs regarding IOLTA accounts. The act includes in this deduction the costs of administering the programs established in the law regarding certain municipal court, county court, and court of common pleas costs and IOTA accounts.

Ongoing law modified by the act also requires that, in making the allocations, the moneys in the Fund that were generated from municipal courts, county courts, courts of common pleas, and IOLTA accounts and all income generated from the investment of such moneys be apportioned, in part, after deduction of the amount authorized and used for actual, reasonable administrative costs, as follows:

(a) Five per cent of the moneys remaining in the Fund, plus any moneys reserved for administrative costs that are not used for actual, reasonable administrative costs, be reserved for distribution to legal aid societies that provide assistance to special population groups of their eligible clients, engage in special

projects that have a substantial impact on their local service area or on significant segments of the state's poverty population, or provide legal training or support to other legal aid societies in the state;

(b) After deduction of the amount described above, one and three-quarters per cent of the moneys remaining in the Fund be apportioned among entities that received financial assistance from the Fund prior to June 30, 1995, but that, on and after that date, no longer qualify as a legal aid society eligible for financial assistance.

The act modifies this provision by including IOTA accounts among the programs generating money for the Fund. The act removes the requirement that any moneys reserved for administrative costs that are not used for actual, reasonable administrative costs be reserved for distribution to legal aid societies, and instead provides that 5% of the moneys remaining in the Fund be reserved for use in the manner described in the law governing the Legal Assistance Foundation Fund *or* for distribution to legal aid societies. The act also includes a requirement that, after deduction of the amounts described above, 15% of the moneys remaining in the Legal Aid Fund be placed in the Legal Assistance Foundation Fund for use in the manner described in the law governing the Legal Assistance Foundation Fund.

Filing fees

(R.C. 120.07, 1901.26, 1907.24, and 2303.201)

Continuing law requires municipal courts and county courts to collect in all its divisions except the small claims divisions, and requires courts of common pleas to collect, the sum of \$15 as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state. The act increases this amount to \$26. Under continuing law, municipal courts and county courts, in their small claims divisions, are required to collect \$7 as an additional filing fee for this same purpose. The act increases this amount to \$11. The act also provides that, in addition to providing financial assistance to legal aid societies that operate within this state, the additional filing fees are also to be used to support the State Public Defender's Office.

Under continuing law, all such moneys from the municipal court must be transmitted on the first business day of each month by the clerk of the court to the Treasurer of State. The act modifies this requirement by stating that the moneys *collected during a month* must be transmitted *on or before the 20th day of the following month* by the clerk of the court to the Treasurer of State *in a manner prescribed by the Treasurer of State or by the Ohio Legal Assistance Foundation.*

The act also requires that the moneys collected by county courts and courts of common pleas be transmitted by the clerk of the court to the Treasurer of State in a manner prescribed by the Treasurer of State or by the Ohio Legal Assistance Foundation. The additional filing fees collected by the court of common pleas do not apply to a probate division of a court of common pleas, except that the additional filing fees apply to name change, guardianship, and adoption proceedings. The act includes decedents' estate proceedings in this requirement.

Under prior law, all money collected from these filing fees was deposited by the Treasurer of State to the credit of the Legal Aid Fund, established under R.C. 120.52. The act modifies this distribution to instead require the Treasurer of State to deposit 4% of the money collected from these filing fees to the credit of the Civil Case Filing Fee Fund, created by the act, and 96% of the money to the credit of the Legal Aid Fund. The act specifies that all money credited to the Civil Case Filing Fee Fund must be used by the State Public Defender for the purpose of appointing assistant state public defenders and for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office.

Ohio Community Service Council Gifts and Donations Fund

(R.C. 121.403)

Among its other statutory duties, the Ohio Community Service Council is to assist various state boards and departments, school districts, and institutions of higher education in coordinating community service programs through cooperative efforts between institutions and organizations in the public and private sectors. The act authorizes the Council to accept monetary gifts or donations, sponsor events that further its purpose and charge fees for participation in those events, and sell promotional items. All moneys received as a result of the activities authorized by the act must be deposited into the Ohio Community Service Council Gifts and Donations Fund created by the act. The fund is in the state treasury, and moneys in the fund may be used only as follows: (1) to pay operating expenses of the Council, including payroll, personal services, maintenance, equipment, and subsidy payments, (2) to support Council programs promoting volunteerism and community service in Ohio, and (3) as matching funds for federal grants.

Consolidation of certain regulatory boards and commissions

(Section 315.03)

The act expresses the intent of the General Assembly to consolidate specified boards and commissions into the Departments of Health, Commerce, and Public Safety not later than July 1, 2006.



Department of Health

The act states that it is the intent of the General Assembly to consolidate the following health-related regulatory boards within the Department of Health:

- (1) The Chemical Dependency Professionals Board;
- (2) The Board of Chiropractic Examiners;
- (3) The Counselor, Social Worker, and Marriage and Family Therapist Board;
- (4) The Ohio Board of Dietetics;
- (5) The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board;
- (6) The Ohio Optical Dispensers Board;
- (7) The State Board of Optometry;
- (8) The State Board of Orthotics, Prosthetics, and Pedorthics;
- (9) The State Board of Psychology;
- (10) The Ohio Respiratory Care Board;
- (11) The Board of Speech-Language Pathology and Audiology;
- (12) The State Veterinary Medical Licensing Board.

Department of Commerce

The act states that it is the intent of the General Assembly to consolidate the following regulatory boards and commissions within the Department of Commerce:

- (1) The Ohio Athletic Commission;
- (2) The Barber Board;
- (3) The State Board of Cosmetology;
- (4) The Board of Embalmers and Funeral Directors;
- (5) The Manufactured Homes Commission;



- (6) The Board of Motor Vehicle Collision Repair Registration;
- (7) The State Board of Sanitarian Registration.

Department of Public Safety

The act states that it is the intent of the General Assembly to consolidate the Ohio Medical Transportation Board within the Department of Public Safety.

Transition team and recommendations

Under the act the Director of Budget and Management and the Directors of Administrative Services, Commerce, Health, and Public Safety must appoint representatives to a transition team. The transition team must also include three members representing the affected regulatory boards who are appointed by the executive directors of those boards.

The transition team is to develop a plan to ensure the smooth and timely consolidation of the boards into the respective departments. It is required to address the details of the consolidations, identifying necessary statutory changes and working with the Office of Budget and Management to develop budgets for the respective departments and the consolidated boards and commissions. It may recommend additional regulatory boards or commissions to be consolidated and may recommend modifications to the planned consolidations.

The act requires the transition team to submit a report containing recommendations and the details for the consolidations not later than December 31, 2005, to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The report and recommendations must address the following issues, and may address additional issues:

- (1) The necessary levels of funding;
- (2) The savings projected as a result of the consolidations;
- (3) The consolidation of activities between each board or commission and the department providing centralized services, including the role of the members of the board or commission and the role of the department;
- (4) The staffing levels needed, whether employees must be retained, and whether any employees retained have civil service status;
- (5) The continuation of the standards and procedures of the board or commission;

(6) The continuation of rules and whether any rules need to be amended as a result of the consolidations;

(7) The transfer of assets, liabilities, and contractual obligations;

(8) The transfer of records and other materials pertaining to the board or commission.

Implementing legislation

The act expresses the intent of the General Assembly to introduce a bill in fiscal year 2006 that will include the necessary statutory changes to effect the consolidations and that will include revised appropriations for the departments and the consolidated boards and commissions for fiscal year 2007.

Satisfaction of judgments and settlements against the state

(Section 303.12)

The act provides that an appropriation made in it or in any other act may be used to satisfy judgments, settlements, or administrative awards ordered or approved by the Court of Claims or by any other court of competent jurisdiction in connection with civil actions against the state. This authorization, however, does not apply to appropriations to be applied to or used for payment of guarantees by or on behalf of the state, or for payments under lease agreements relating to, or debt service on, bonds, notes, or other obligations of the state. In addition, the authorization includes appropriations from funds into which proceeds of direct obligations of the state are deposited only to the extent that the judgment, settlement, or administrative award is for, or represents, capital costs for which the appropriation may otherwise be used and is consistent with the purpose for which any related obligations were issued or entered into. This provision of the act is not intended to subject the state to suit in any forum in which it is not otherwise subject to suit, and it is not intended to waive or compromise any defense or right available to the state in any suit against it.

Conveyance of real estate in Athens County

(Section 506.03)

The act authorizes the Governor to execute a deed in the name of state conveying to Hocking.Athens.Perry Community Action, and its successors and assigns, all of the state's right, title, and interest in specified real estate in the Village of Glouster, Trimble Township, Athens County. The consideration for the conveyance is the purchase price of \$1.



The act specifies the procedures for the preparation, execution, and recording of the deed to the real estate upon the payment of that purchase price. Hocking.Athens.Perry Community Action must pay the costs of the conveyance.

This conveyance authority expires one year after the provision's effective date.

Safekeeping of securities pledged by trust companies

(R.C. 1111.04)

Under continuing law, prior to doing business in Ohio, a trust company must pledge specified securities having a par value of \$100,000 either by delivering the securities to the Treasurer of State or by placing the securities with a qualified trustee for safekeeping in an account on behalf of certain interested parties, including the Treasurer of State. A federal reserve bank located in Ohio and, under specified circumstances, a trust company may be a qualified trustee for this account. Under the act, a federal home loan bank also is eligible to be a qualified trustee of such an account regardless of where the federal home loan bank is located.

Ohio CASA/GAL Study Committee

(R.C. 2151.282)

The act creates the Ohio Court Appointed Special Advocate/Guardian Ad Litem (CASA/GAL) Study Committee. The Study Committee is to consist of five members: a representative of the Ohio CASA/GAL Association appointed by the Governor; a member of the Ohio Juvenile Judges Association appointed by the President of the Senate; a member of the Ohio State Bar Association appointed by the Speaker of the House of Representatives; a representative of the Office of the State Public Defender appointed by the Minority Leader of the Senate; and a representative of the Ohio County Commissioner's Association appointed by the Minority Leader of the House of Representatives. The CASA/GAL representative is to be the chairperson of the Study Committee. The members of the Study Committee must be appointed within 60 days after the effective date of this provision of the act.

The Study Committee is required to do all of the following:

(1) Compile available public data associated with state and local costs of advocating on behalf of abused, neglected, and dependent children;

(2) Examine the costs in counties that have established and operated an Ohio CASA/GAL Association program, and the costs in counties that utilize the



county public defender, joint county public defender, or court-appointed counsel, to advocate on behalf of abused, neglected, and dependent children;

(3) Analyze the total cost of advocating on behalf of abused, neglected, and dependent children on a per county basis and a per child served basis;

(4) Analyze the cost benefit of having an Ohio CASA/GAL Association versus utilizing the county public defender, joint county public defender, or court-appointed counsel to advocate on behalf of abused, neglected, and dependent children;

(5) Analyze the advocacy services provided to abused, neglected, and dependent children by Ohio CASA/GAL Association programs versus the advocacy services provided to abused, neglected, and dependent children by county public defenders, joint county public defenders, or court-appointed counsel.

The act requires the Ohio CASA/GAL Association to provide staff for the Ohio CASA/GAL Study Committee and to pay for any expenses incurred by the Study Committee. The Study Committee must meet within 30 days after the appointment of its members.

The Study Committee is required to prepare a report containing all relevant data and information that it is required to compile, examine, and analyze. The Study Committee must deliver a final copy of the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before July 1, 2007.

Applicability of Ohio's Miscellaneous Bond Proceedings Law

(R.C. 9.981, 133.08, and 133.081)

Among other types of bonds, Ohio's Miscellaneous Bond Proceedings (MBP) Law applies to bonds issued under the Hospital Agencies Law, the Ohio Building Authority Law, the Public Facilities Commission Law, the Ohio Housing Finance Agency Law, and the New Community Organization Law. The MBP Law provides options to the state, political subdivisions, and other entities with authority to issue bonds, regarding the terms of bond issuance. Those options include the provision of floating rate interest structures, put arrangements, special interest payment dates related to those structures or arrangements, issuances of bonds as commercial paper, and bond sales at discount. The bond proceeding or other documents or agreements pertaining to the bonds may provide for interest rate hedges, credit facilities, and agreements with indexing agents, remarketing agents, or administrative agents. Am. Sub. H.B. 431 of the 125th General



Assembly extended application of the MBP Law to bonds issued under the Uniform Public Securities (UPS) Law (extension effective July 1, 2005). In making that general change, H.B. 431 removed provisions from the UPS Law that made only certain sections of that law subject to the MBP Law. Those sections were R.C. 133.08(H) (certain county-issued revenue securities), 133.081(F) (certain county-issued sales tax supported bonds), and 133.10(I) (certain school district tax anticipation securities).

The act reverses the provisions of H.B. 431 that extended application of the MBP Law to all bonds issued under the UPS Law and makes the reversal effective July 1, 2005. The act also re-enacts provisions of law that made the MBP Law applicable to certain county-issued revenue securities and sales tax supported bonds (see above). Finally, the act extends the MBP Law on July 1, 2005 to regional transit authority revenue bonds and regional water and sewer district water resource revenue bonds.

NOTE ON EFFECTIVE DATES

(Sections 609.03 to 615.90)

Section 1d of Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The 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. For example, many of the act's provisions that provide for or are essential to the implementation of a tax levy 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, 2007, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-15-05	pp. 207-210
Reported, H. Finance & Appropriations	04-12-05	pp. 387-388
Passed House (54-45)	04-12-05	pp. 388-667
Reported, S. Finance & Financial Institutions	06-01-05	pp. 560-561
Passed Senate (19-13)	06-01-05	pp. 561-777
House refused to concur in Senate amendments (0-91)	06-07-05	pp. 909-914
Senate requested conference committee	06-07-05	p. 838
House acceded to request for conference committee	06-07-05	pp. 940-941
House agreed to conference committee report (53-46)	06-21-05	pp. 975-1362, 1376
Senate agreed to conference committee report (19-13)	06-21-05	pp. 875-1263

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